



**REVIEW OF DETROIT PUBLIC SCHOOLS
DURING STATE MANAGEMENT
1999-2016**

Produced by:
The Allen Law Group, PC
Attorney Client Privileged

Submitted:
November 8, 2019

LEGAL MEMORANDUM
Attorney-Client Privileged

To: Jenice C. Mitchell Ford, *General Counsel*
Detroit Public Schools Community District

From: George K. Pitchford, Esq.
The Allen Law Group, PC

Date: November 8, 2019

Re: Review of Detroit Public Schools During State Management 1999-2016

BACKGROUND

Detroit Public Schools Community District (“DPSCD”) has requested that the Allen Law Group, PC (“ALG” or the “Firm”) research and analyze Detroit Public Schools’ (“DPS”) decisions and practices from 1999 to 2016 (the “Subject Period”) in the following areas:

1. Management of Real Property and Facilities
2. Finances
3. Staffing and Labor
4. Management of Academics and Enrollment

Accordingly, this Memorandum and its attached exhibits serve as a response to this request.¹

METHODOLOGY

This Memorandum and the information presented herein is based on research and information gathered from several different sources. This includes in-person formal and informal interviews with current and former staff members who have knowledge regarding DPS’ operations during the Subject Period. In order to encourage candid discussion about sensitive issues, interviewees were assured they would be able to maintain some level of anonymity. Therefore, throughout this Memorandum all comments from interviewees are attributed to “Interviewees.”² Additionally, ALG conducted a review of publicly available documents, academic writings, public records, newspaper accounts, board meeting minutes, DPS Comprehensive Annual Financial Reports, research papers, and historical documents provided by DPS.

¹ Please note that this Memorandum covers over fifteen (15) years of district operations. As such it is not intended to be a complete record of the Subject Period, but instead a summary utilizing examples and significant events to explain and provide context to the decision making and practices of DPS at that time.

² Please note that none of the interviewees were under oath when interviewed. Please further note that “Interviewees” is a generic identification of comments and information provided by interviewees and may not always necessarily indicate that the information was provided by more than one interviewee.

EXECUTIVE SUMMARY

An examination of the State of Michigan's oversight of DPS during the Subject Period reveals the startling mismanagement of what was formerly one of the nation's largest urban school districts. These missteps include the purchase of overpriced real estate without proper due diligence, inattention to aging building maintenance, and the failure to address DPS' plummeting student achievement and enrollment. Perhaps most surprising is that the cadre of state-appointed leaders failed to even accomplish their purported primary task of addressing DPS' fiscal challenges. Instead of taking advantage of their relative isolation from the political pressures that supposedly hindered the ability of previous elected school boards, state-appointed leaders seemingly failed to make the hard decisions necessary to right size DPS in a responsible and transparent fashion. Under state-appointed leadership, DPS engaged in questionable financial tactics and implemented temporary fixes, which allowed its debt to grow and ultimately led to the decline of DPS as it existed during the Subject Period.

In light of all of this, it is difficult to completely quantify the damage done to DPS and the community during the Subject Period. This notwithstanding, some illustrative costs worth noting include:

Projected cost of capital repairs/renovations to DPS' buildings that fell into disrepair during the Subject Period	\$500 Million
Purchase of the Fisher condominium interest	\$24 Million
Additional interest as a result of the 2011 conversion of short-term debt into long-term debt	\$66 Million
Identified real estate overspending	\$14 Million
Overbilling and/or improper charges by facilities contractors	\$6 Million
Total:	\$610 Million

As startling as the aforementioned information regarding the costs incurred during the state's oversight during the Subject Period is, it likely fails to capture the most significant losses to DPS: countless students throughout the City of Detroit who were likely not afforded the educational opportunities they needed and deserved. Unfortunately, unlike some of the other losses discussed in this Memorandum, the community will likely feel the impact of these damages for generations to come, as these same students are required to enter a rapidly evolving global economy where an adequate K-12 education is a necessity.

OVERVIEW OF DETROIT PUBLIC SCHOOLS 1999 THROUGH 2016³

I. 1994 Adoption of Proposal A and K-12 Education Funding in Michigan

In March 1994, Michigan voters adopted Proposal A, which fundamentally changed how K-12 schools are funded in the State of Michigan.⁴ Under the newly adopted Proposal A, schools were no longer funded by taxes on property located within the school district. Instead, a state sales tax became the primary source of school funding. Proposal A also enacted a per pupil funding formula that based a school district's revenues on its student enrollment. This was designed to create a more equitable funding mechanism for Michigan's schools and eliminate disparities between high property value school districts and those with a lower property tax base.⁵ Its stated goal of equality notwithstanding, Proposal A failed to truly level the playing field between the state's districts in wealthy communities and financially struggling urban and rural community school districts. For instance, due to Proposal A's hold harmless exception, Birmingham Public Schools received \$11,924 per student in state aid during the 2015-16 school year, while Detroit Public Schools only received \$7,434 per student in state aid. In addition to overhauling how Michigan's school districts were funded, Proposal A also allowed for funding dollars to easily follow students from one school district to another. This opened the door for schools of choice, encouraging school districts to enroll students from outside their districts and compete with one another for students. Additionally, the portability of education funding built into Proposal A would also serve as a springboard for the expansion of charter schools, especially in urban cities such as Detroit.

II. Governance of DPS 1999 - 2016

During the Subject Period, DPS' persistent financial challenges set the stage for a series of state takeovers. The state's first foray into running DPS was packaged as a mayoral takeover. Under Public Act 10 of 1999 ("PA 10"), the governance powers of DPS' elected school board were suspended and its members were deemed ineligible for appointment to the newly formed school reform board (the "Reform Board"), to which the Mayor of the City of Detroit was required to appoint six (6) out of seven (7) members. Also, pursuant to PA 10, the seventh member of the Reform Board was the state's Superintendent of Public Instruction or their designee.⁶ A state level appointee being given a voting position on the Reform Board is notable because under Section 374(1) of PA 10, DPS' Chief Executive Officer ("CEO") had to be selected by unanimous vote.⁷ This represented one of the first times the state directly inserted itself into the governance of DPS

³ See Exhibit 1, *Detroit Public Schools – Events and Governance Timeline*.

⁴ Julie Berry Cullen and Susanna Loeb, "School Finance Reform in Michigan: Evaluating Proposal A," *Helping Children Left Behind: State Aid and the Pursuit of Educational Equity* ed. John Yinger (Cambridge, MA: MIT Press, 2004), 215.

⁵ Despite the stated intent to encourage a more equitable distribution of education funding, Proposal A's Per Pupil Allowance Formula does not consider student specific needs that may also impact funding needs. Moreover, under Proposal A, many of the school districts that previously benefitted from higher funding because of their higher property tax base were deemed "hold harmless" school districts and continued to receive funding in addition to the per pupil allocation.

⁶ Exhibit 2 at Sec. 372(2)(b).

⁷ *Id.* at Sec. 374(1).

by granting a state representative voting privileges on the Reform Board and retaining the authority to exercise a *de facto* veto over other members regarding the selection of the CEO.⁸ Moreover, although selected and not elected, the CEO would essentially have the powers traditionally associated with both an elected board and a superintendent.⁹

The Reform Board and the CEO governed DPS for five (5) years. In what would become an unfortunate pattern, the exodus of students out of DPS actually increased during this time. Consequently, at the end of the Reform Board and CEO's five (5) year terms, they managed to turn a surplus left by the former elected board into a significant deficit.¹⁰ In 2005, in accordance with PA 10, DPS' electorate got to decide whether it wanted DPS to keep the Reform Board and CEO, and voted to return DPS back to an elected school board.¹¹

In 2009, after just three (3) years of control by an elected school board and with a deficit of over \$400 million, the state declared a financial emergency and appointed DPS' first Emergency Manager pursuant to Public Act 72 of 1990 ("PA 72").¹² Although the elected board members remained in office, they were considered powerless with regards to DPS' finances and operations. Moreover, under PA 72, the state directly intervened in the governance of DPS and took over the district. The new Emergency Manager was granted even broader authority than the CEO under the Reform Board.¹³ Despite these efforts by the state, DPS continued to lose students and funding at an alarming rate. In an unfortunate continuation of the pattern set by the Emergency Manager's CEO predecessor, three (3) years after his appointment and despite significant cuts to expenditures, DPS still had a deficit in excess of \$283 million.¹⁴ This pattern would continue for the next seven (7) years as different Emergency Managers attempted and ultimately failed to salvage DPS' finances.

⁸ Exhibit 2 at Sec. 374(4).

⁹ *Id.*

¹⁰ Exhibit 3 at 84.

¹¹ Karla Scoon Reid, "Detroit's First Elected Board in 6 Years to Face Challenges," *Education Week*, November 8, 2005.

¹² Public Act 72 of 1990 refers to the title Emergency Financial Manager. In 2011, Public Act 4 of 2011, a successor statute to Public Act 72 of 1990 was adopted and changed the title to Emergency Manager. This successor statute was short lived, however, as it was repealed in a statewide voter referendum in late 2012. Governor Snyder and the legislature quickly responded to this and adopted Public Act 436 of 2012 that same year, which was similar to the repealed Public Act 4 of 2011 and retained the new title of Emergency Manager, but contained additional language so that voters could not repeal it by way of a referendum. Accordingly, for the sake of clarity, all individuals appointed under any of these laws are referred to as Emergency Managers throughout this Memorandum. See "Detroit School Charade Stalls Financial Reformer," *The Detroit News*, Dec. 12, 2008.

¹³ See MCL 141.1201 *et. seq.*

¹⁴ Exhibit 4 at 125.

ANALYSIS OF DPS DECISIONS AND PRACTICES 1999 THROUGH 2016

I. DPS FACILITIES AND PROPERTY DECISIONS AND PRACTICES 1999 THROUGH 2016

a. Maintenance of DPS' Facilities

Throughout the Subject Period, there were significant issues with building maintenance throughout DPS. DPS' teachers and staff routinely complained about deplorable building conditions. In August 2016, DPS' teachers staged a series of sick-outs in protest of the dilapidated building conditions and forced 88 of DPS' schools to shut down.¹⁵ That same year, prompted by the complaints, the Mayor of the City of Detroit took a personal tour of four (4) of DPS' buildings, and based on that tour, ordered inspections of all DPS' buildings.¹⁶ During these inspections, inspectors found over 150 violations of health and building codes.¹⁷ Some of the more egregious violations included insects and rodents in buildings, signs of water damage in the ceilings, and mold/mildew found growing in at least two (2) classrooms.¹⁸ Already facing various financial challenges, DPS was forced to divert precious capital from other priorities in order to immediately remedy the violations to the City of Detroit's satisfaction.

In addition to what was uncovered by employees' complaints and the City of Detroit's inspections, a 2018 independent facilities assessment conducted by OHM Advisors further confirmed that DPS' facilities had been allowed to fall into disrepair during the Subject Period. According to OHM Advisors' report, approximately 25 of the 52 district buildings assessed were rated as being in poor or unsatisfactory condition.¹⁹ Moreover, OHM Advisors estimate the cost of completing the necessary capital repairs and upgrades to be in excess of \$500 million, and project that this cost will grow to over \$1.5 billion over the next ten (10) years.²⁰

Interviewees provided mixed feedback when asked about DPS' decisions and practices regarding building maintenance during the Subject Period. They noted that DPS was able to modify and/or eliminate onerous collective bargaining provisions and agreements with various maintenance unions that were inefficient and financially unsustainable. Additionally, under the Emergency Manager, DPS outsourced building maintenance to third-party contractors, which interviewees acknowledged resulted in significant savings. However, Interviewees expressed concern about the effectiveness of some of the contractors. They noted that at least one (1) of the former contractors would routinely cut corners and understaff the buildings, leaving them in unacceptable conditions. Additionally, contractors failed to complete routine maintenance on the buildings' various systems, which would often lead to unnecessary costs incurred by DPS. Moreover, according to confidential information, one contractor had overbilled, charged for inappropriate expenses, and/or unauthorized expenses overcharged DPS for skilled tradesmen

¹⁵ Ann Zaniewski, "Judge Rules Against DPS in Teacher Sick-Out Case," *Detroit Free Press*, Aug. 18, 2016. It should be noted that many of the teachers that participated in the sick-outs also stated concerns about low wages and other conditions.

¹⁶ Joe Guillen, "City Inspections of Detroit Schools Find Rodents, Mold," *Detroit Free Press*, Jan. 25, 2016.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Exhibit 5 at 18-21.

²⁰ *Id.* at 26.

tools and services in excess of \$5,500,000. Interviewees noted that these concerns were brought to the CEO's and various Emergency Managers in control of DPS during the Subject Period but felt that they were ignored in favor of more "pressing concerns." These events, all occurring during the Subject Period, were apparently a result of a lack of appropriate oversight and unchecked spending.²¹

b. Closure of DPS' School Buildings

The results of a review of DPS' facilities decisions and practices regarding the closure of school buildings during the Subject Period are startling.²² In 2000, approximately 288 school buildings were open; by 2015, only 93 remained open.²³ During the Subject Period, DPS was responsible for shuttering over 175 buildings and ensuring that these assets were properly protected and maintained. Unfortunately, based on available data, properly closing and protecting the vacant buildings was not a priority for DPS' various leadership teams. In 2015, a local non-profit organization conducted an independent survey of the approximately 81 vacant buildings. According to the published results of its survey, only 37 of the buildings were properly secured, 45 had simply been abandoned and were accessible to trespassers and vandals, and 26 were completely exposed not only to trespass and vandalism, but also the elements.²⁴ The report also noted that all of the buildings, secured or otherwise, had suffered damage from scrappers and/or fire.²⁵

Information provided by Interviewees supports the findings of the independent study regarding the condition of DPS' vacant buildings. Interviewees stated that during the Subject Period, Emergency Managers failed to allocate the funds sufficient to properly close the buildings. Interviewees recounted stories of employees from various departments showing up on the weekends with their own tools and supplies to try their best to better secure the buildings on their own. Interviewees reiterated that proper closure of the buildings and thus preservation of these assets either was not a priority, or DPS did not have adequate funds to keep up and complete the projects properly. Interviewees noted that these challenges were only exacerbated by a lack of coordination between DPS and the Detroit Police Department. It became common knowledge in the community that DPS' closed buildings were poorly protected and therefore easy targets for scrappers and vandals. As DPS lurched from one financial crisis to another during the Subject Period, this lack of strategic planning and effective prioritization was seemingly typical of DPS' state-appointed leadership. Moreover, it appears that there was an issue of bandwidth, as closures were often done so haphazardly that the meager resources DPS had allocated to the effort would quickly become overwhelmed, forcing employees to make difficult decisions about what would and would not get done.

²¹ The cites and references to the confidential information referenced and relied upon on this section have been intentionally omitted.

²² Exhibit 6.

²³ John Grover and Yvette van der Velde, "A School District in Crisis: Detroit's Public Schools 1842-2015," *Loveland Technologies*, at 41, 2 ed., 2016.

²⁴ *Id.*

²⁵ *Id.* at 42-45.

Regardless of the cause, the failure of state-appointed leadership to properly address this matter may have resulted in many of these vacant buildings becoming blight in their Detroit communities, or even worse, safety hazards. Additionally, as they continue to deteriorate, any remaining potential value as real estate may be lost, costing DPS a much-needed alternative source of potential revenue.

c. DPS' Purchase and Sale of Real Property²⁶

Many of the decisions during the Subject Period regarding the sale and purchase of real property are troubling. For instance, the 2002 purchase of the condominium interest in the Fisher Building for over \$24 million as part of the 1994 Capital Improvement Bond Program was fraught with issues, giving rise to concerns of overpayment, conflicts of interest, and poor judgment. According to reports, DPS' state-appointed CEO decided to purchase the Fisher Building space to serve as DPS' new administrative headquarters.²⁷ The structure of this transaction was described as "non-traditional" from the start. If nothing else, it was unusual and troubling to some of the staff members working on the matter that the seller was also serving as DPS' broker. Moreover, citing the unique nature of the transaction, DPS' leadership decided to move forward with the purchase without receiving a formal evaluation or appraisal of the potential market value of the condominium interest they were buying on behalf of DPS. Although no post-purchase due diligence was ever completed to confirm whether DPS had spent too much on the space, DPS' own attorney for the transaction described the purchase as "grossly overpriced" and attempted to renegotiate some of the terms. DPS' former broker flatly refused, and only offered to purchase some of the space back at a price far less than they had just sold it to DPS.

These issues continued to arise even after the purchase of the Fisher Building space was completed. Although \$4 million of the sale price had been allocated for buildout costs, after the purchase was complete it was realized that the actual cost of the buildout would be in excess of \$18 million. In spite of the fact that this buildout was no longer simply preparing the space for DPS, the decision was made to proceed with the project and select contractors to complete the work without even going through a competitive bid process. Moreover, even though the original allocation was originally intended to fund the entire purchase and buildout with bond dollars, because the nature and scope of the buildout project had changed so drastically, DPS was ultimately forced to spend \$5 million from its own general fund to complete it, despite millions of bond dollars still being available. Leadership failed to appropriate the funds needed to prepare the space for DPS' use, which further exacerbated DPS' financial deficit.

Reform Board members at the time of the purchase also confirmed they had little to no say in these matters and expressed general frustration at how powerless they were in their advisory role to the CEO. A member of the Reform Board may have best summed up the concerns about the transaction when he recalled that he did not understand how it helped DPS to sell its ownership of one old building to buy a condominium interest in another old building.

²⁶ Cites have been omitted from this section, as the sources referenced are confidential.

²⁷ The cites and references to the confidential sources relied on in this section have been intentionally omitted. The report can be requested from the DPSCD Office of the General Counsel.

d. Findings Regarding DPS' Decisions and Practices Regarding Facilities and Real Property

Plagued by mounting financial woes during the Subject Period, DPS seemingly employed a haphazard approach to maintaining its facilities. Moreover, building closures were given a low priority and likely suffered from both a lack of funding and direction. This appears to have been a costly mistake, as many of the vacant buildings have been stripped and/or vandalized. These decisions and the failure to engage in strategic decision making undoubtedly had a lasting negative impact on DPS. Moreover, it represents yet another instance of how the current leadership must bear the burden of previous state-appointed leadership's decisions.

It would be difficult to conduct a review of every real estate transaction during the Subject Period, but if the murky purchase and improvement of the condominium interest in the Fisher Building was in any way typical of DPS' approach to the sale and/or purchase of real estate, then there is cause for grave concern. That transaction demonstrated a surprising disregard of fairly common best practices, such as obtaining an appraisal prior to purchasing real estate. Moreover, even some of the employees working on the transaction felt that DPS paid far too much for the property, which gives rise to the concern whether DPS was routinely paying too much in real estate transactions during the Subject Period, and whether transactions were free of any conflicts of interest.

II. DPS FINANCE DECISIONS AND PRACTICES 1999 THROUGH 2016

a. DPS' Unsolved Structural Challenges and Operational Deficits

When considering DPS' decisions and practices regarding finances during the Subject Period, it is necessary to remember that DPS, like many other districts, had been chronically underfunded since the adoption of Proposal A. Despite this reality, during the Subject Period, DPS' leadership either refused or failed to address the challenges this fact presented. As such, DPS consistently spent significantly more money than it brought in as revenue, which led to operational deficits that needed to be addressed by some combination of reducing expenditures, and increasing revenue, or at the very least reducing the rate at which revenues were falling. During the Subject Period, the state's Emergency Managers failed to take any of these actions while DPS' operational deficits continued to skyrocket. For instance, in FY 2006 DPS had a small but positive fund balance of 20.6 million.²⁸ By FY 2011, just five (5) years later, the unchecked spending resulted in an operational deficit of \$284 million.²⁹

In the opinion of Interviewees with knowledge about the decision making during the Subject Period, the failure to address DPS' structural financial issues came down to an unwillingness of the leadership to "make hard decisions." As an example, Interviewees pointed to DPS' failure to align building utilization to the actual student populations. According to Interviewees at various points during the Subject Period, it was not uncommon for district buildings with the capacity for thousands of students to have less than three hundred (300) students in them. Even worse yet, newly built buildings would sometimes go underutilized, while costlier

²⁸ DPS Comprehensive Annual Financial Report, June 30, 2006.

²⁹ Exhibit 4.

and less efficient older buildings in the same vicinity would also remain open and underutilized. With factors such as these draining DPS' resources, Interviewees felt that it was clear to DPS' CEO and Emergency Managers that building usage needed to be strategically realigned with the shifting population trends in the City of Detroit. Nevertheless, Interviewees recalled witnessing these issues be ignored until they reached crisis level proportions. When finally addressed, the issues would be dealt with in an inefficient and reckless manner, with little thought to the overall strategy and direction of DPS, and ultimately costing DPS rather than having a positive effect on its finances. The only explanation Interviewees could offer for the repeated failures of the state-appointed leadership to proactively seize the initiative on these tough issues was politics and fear, as many of the unelected state-appointed leaders either did not have a mandate or the trust of the community and were therefore hesitant to take on controversial issues such as school closings, until they had no choice.

Although these are Interviewees' personal perspectives, there is evidence to support their assertions, such as the failure to adequately respond to DPS' growing operational deficits. This is troubling, as one of the stated purposes of utilizing state appointed leaders such as Emergency Managers is that they are insulated from politics and able to make tough financial and operational decisions in the best interest of DPS and its students. Based on the available data and the Interviewees' assessment, however, it appears as if the opposite may have been true. Installed by the state, and therefore lacking any connection and/or trust from the community, coupled with the sensitivity surrounding the issue of state control of DPS, it appears that the state-appointed leaders may have felt they lacked the support to take on some of the structural issues plaguing DPS and its finances.

b. Converting Short-Term Debt into Long-Term Liabilities

In addition to its general obligation debt for which the responsibility falls directly on the taxpayer, DPS also issues short-term notes, often referred to as State Aid Notes, to address its challenges with cash flow. Unlike the general obligation debt, this obligation is serviced directly from DPS' general fund and is secured by DPS' state aid funding. As such school districts normally repay these debts out of their general fund in the same year they are issued.

Faced with mounting operational deficits and instead of addressing the underlying structural issues, DPS converted this short-term debt into a long-term liability on several occasions during the Subject Period. This strategy allowed DPS to treat short-term loans to address cash flow issues as additional revenue and gave the appearance of progress with respect to DPS' financial challenges. In 2005, while under the control of the CEO and Reform Board, DPS converted a \$210 million cash flow borrowing into a long-term liability to be repaid over 15 years and further artificially delayed its latest financial crisis by not requiring repayment of the debt to start until 2007.³⁰ This also forced DPS to pay for these liabilities out of future general funds and take on more debt in the form of increased interest payments. Additionally, because these dollars could now be treated as revenue, it also gave the appearance that DPS had somehow balanced the

³⁰ See "CRC Memorandum: State Assumption of School Debts," *Citizens Research Council of Michigan*, No. 1135 at 4 (April 2015).

budget.³¹ In reality, this effectively diverted future dollars that should be used in the classroom, and at best DPS' leadership only delayed the inevitable shortfall to a later date. Predictably, just five (5) years after repayment on the original debt was supposed to have commenced, DPS still owed \$141 million of the original \$210 million debt.³² Now under the control of an Emergency Manager, the state allowed DPS to refinance this debt yet again and stretch the payment schedule out until June 2020.³³ Once again, this resulted in DPS having to pay more in interest, and yet another pledge of future dollars originally intended for the classroom.

This would not be the last time DPS used this questionable strategy to avert a fiscal crisis. In October 2011, DPS borrowed \$420 million to help with its cash flow.³⁴ As DPS' revenues continued to fall, the Emergency Manager received authorization from the state to convert \$231 million of the original borrowing into a long-term ten (10) year liability. This was at an additional interest cost of approximately \$66 million, with an annual debt service from DPS' general fund of \$32 million over the ten (10) year life of the liability.³⁵ Additionally, since the conversion to a long-term liability allowed the borrowing to now be treated as revenue for the general fund, it again gave the false appearance that DPS' operating deficit at the end of FY 2011 had been reduced from \$284 million to \$83 million at the end of FY 2012.³⁶

The impact of these conversions of DPS' short-term debts into long-term liabilities was significant. By June of 2014, DPS had incurred approximately \$299 million in long-term liabilities as a result of converting and then refinancing what were originally supposed to be short-term cash flow borrowings. The cost of servicing this debt was over \$52 million dollars per school year, most of which had to be paid out of DPS' general fund. That amounted to a total cost of approximately \$1,100 per pupil diverted from DPS' \$7,552 per-pupil foundation allowance each school year³⁷ to debts as old as ten (10) years.³⁸ It is difficult to assess whether this conversion technique was the appropriate response to DPS' financial challenges during the Subject Period. This notwithstanding, it is undeniable that it created a real risk of forging a false sense of security for DPS and its officials, as operational deficits were artificially lowered, and the structural financial crisis could continue to go unaddressed. Moreover, it is worth also noting that conversion of short-term cash flow debt into a long-term liability is not a common practice for Michigan school districts.

c. Financial Strategy of Last Resort

Dubious borrowings and conversions of debt were not DPS' only coping mechanism with its financial challenges during the Subject Period. Faced with both revenue and cash flow challenges, during truly desperate times DPS would simply not pay some of its financial obligations. Interviewees recalled this unconventional approach to finances and cash flow management taking various forms. Sometimes DPS would simply not pay for its utilities based on

³¹ *Id.* at 4-5.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 4.

³⁷ Based on FY 2016-2017 data, "Per-Pupil Foundation Allowance Ten-Year History for Schools," *Senate Fiscal Agency*, Aug. 8, 2018.

³⁸ See "CRC Memorandum: State Assumption of School Debts" at 4.

the assumption that the City of Detroit and other utilities would not be willing to shut them off, and other times various vendors and district partners would have to go months without having their invoices settled.

In FY 2015, while DPS was under the authority of an Emergency Manager, this non-payment strategy was expanded in a troubling fashion. Despite state law requiring all Michigan school districts to make monthly contributions to the Michigan Public School Employees Retirement System (“MPERS”), the multi-employer cost-sharing retirement plan for public school employees run by the State of Michigan, DPS consistently failed to make the payment. Unlike previous implementations of this strategy, this instance resulted in a significant debt of \$80 million owed to the State of Michigan. The situation became so serious that MPERS threatened to garnish DPS’ state aid payments in order to settle the debt. Had MPERS moved forward with this threat, it likely would have resulted in the collapse of DPS. Moreover, it is noteworthy that a portion of the funds that DPS was withholding from MPERS were required contributions from DPS’ own employees. Therefore, for a period of time, it is highly likely that DPS was not only operating on its employees’ money, but maybe even paying them at least in part with their own money. Again, as with the aforementioned short-term loan conversions, it is unclear what the ultimate strategy was behind DPS withholding tens of millions of dollars from the state’s retirement fund in violation of the law. It may have been some sort of attempt to negotiate with the State of Michigan regarding DPS’ financial obligations, or perhaps it was the last resort when it became clear that there were insufficient funds to operate DPS.

d. Findings Regarding DPS’ Financial Decisions and Practices

During the Subject Period, DPS failed to address DPS’ structural financial issues. Expenditures continued to exceed dwindling revenues, which led to expanding operational deficits each school year. This may have been due in part to the reluctance of DPS’ leadership to make tough and potentially unpopular decisions. Moreover, even when forced by DPS’ fiscal woes to make such decisions, they were done haphazardly and sometimes did more harm to DPS than good. As a result, DPS engaged in questionable borrowing that resulted in significant debts. Moreover, DPS implemented a risky strategy of not paying its obligations, sometime in violation of the law, that seemed to accomplish little other than to allow DPS to limp towards the next inevitable fiscal crisis.

III. STAFFING AND LABOR DECISIONS AND PRACTICES 1999 THROUGH 2016

a. Alignment of Labor Cost with Declining Enrollment and Revenues

Historically, a significant contributing factor to DPS’ financial and operational woes was labor costs. These challenges were driven by costs related to salaries, benefits, and inefficient work rules. The data from DPS during the Subject Period, however, demonstrates that DPS made significant gains in aligning its labor cost with the shrinking student population. In 2005, DPS had over eight thousand (8,000) teachers.³⁹ By 2015, however, that number had dropped to three

³⁹ Exhibit 7 at 7.

thousand (3,000), representing a 62.5% reduction in just ten (10) years.⁴⁰ During that same period, the number of DPS' administrators went from 583 to 333, which represents a 42.9% reduction.⁴¹ Although not necessarily determinative, this was at least proportionate to the enrollment trends during that same period, which went from 141,000 students in 2005 to 47,280 students in 2015, representing a 66.5% drop.⁴² Therefore, unlike many other areas of DPS, such as finances and facilities, DPS' staffing levels in two of the largest labor pools, administration and teachers, kept pace with declining student enrollment.

During the Subject Period, it appears DPS also kept salaries aligned with DPS' shrinking enrollment and revenue. According to the available data, in 2015-2016, the state average for public school teachers' salaries was \$61,875.⁴³ DPS teachers at that same time were only making an average of \$63,716, a difference of less than \$2,000. This parity in pay was at least in part due to the various concessions that DPS' teachers agreed to or were otherwise imposed upon them. No definitive records of the concessions were available, however, according to Interviewees. Starting in 2005, various groups around DPS, including the teachers, agreed to a variety of concessions including a 5% wage reduction and furlough days. Interviewees also noted that despite recent efforts to achieve some parity in compensation, some of the teachers that took these 2005 concessions still have not returned to their 2005 pay levels, fourteen (14) years later.

b. DPS' Staffing Challenges and the Use of Substitute Teachers

Based on the alignment between the staffing levels and enrollment during the Subject Period, it is arguable that the CEO and particularly the Emergency Managers effectively managed DPS' staffing levels and related costs through concessions and layoffs. It is important, however, to understand whether this was accomplished without adversely impacting DPS' classroom environment. According to Interviewees, it was not. In addition to reportedly devastating the morale of DPS teachers with these reductions and concessions, Interviewees asserted that during much of the Subject Period, it became clear that a major part of the Emergency Manager's financial and staffing strategy was to maximize the utilization of substitutes instead of full-time teachers in order to realize a significant savings. Interviewees reported at any given time there could be more than five hundred (500) active substitutes teaching children in DPS, with little to no effort to find full-time teachers to replace them. Interviewees also recounted how the use of substitutes became so pervasive during the Subject Period that there were some substitutes that taught a class for an entire school year akin to a full-time teacher. Interviewees noted that they openly worried about whether DPS' children were getting the best educational opportunities with so many substitutes taking the place of full-time certified teachers throughout DPS, but leadership ignored these concerns, or dismissed them with the excuse that DPS was unable to recruit qualified teachers because of the reduced pay and benefits DPS' teachers received. This was somewhat ironic in light of the fact that often times it was the very same state-appointed officials who had negotiated and/or imposed these labor concessions that now apparently made it difficult to recruit and retain enough full-time educators.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Exhibit 7 at 6.

⁴³ "Average 2015-16 Teacher Salaries," *MLive*, Mar. 13, 2017.

c. The Termination Incentive Program

The rampant use of substitute teachers was not the only attempt during the Subject Period to extract savings out of DPS' staff. In 2009, DPS' Emergency Manager implemented a new initiative with the hopes of relieving some of the pressure from DPS' cash flow. The program was called the Termination Incentive Plan (the "TIP Program") and was negotiated into DPS' collective bargaining agreements. Under the TIP Program, beginning in January 2010 and ending in December 2012, affected employees had \$250 deducted from each paycheck, and the funds were deposited into a "TIP Account," where they would be held until an employee separated from DPS. Upon separation, the employee would be eligible for a \$1,000 bonus for each year of service (up to 9 years of service). In other words, DPS created a new post-employment benefit at its own expense and had once again converted a short-term debt obligation, a portion of employees' salary, into a long-term liability. While the TIP Program was in place, DPS collected millions from employees with the promise that they would recoup the funds upon their separation from DPS.

Once again demonstrating a lack of continuity in strategy between the various Emergency Managers during the Subject Period, a new Emergency Manager was appointed and promptly terminated the program prior to its originally agreed upon December 2012 end date and refused to payout some of the employees per the terms of the program when they left DPS. The teacher's union objected to DPS seemingly breaking its promise to its members and filed a grievance on the matter, which was arbitrated.⁴⁴ As a further indicator of just how little continuity there was amongst the Emergency Managers, Interviewees confirmed that the prior Emergency Manager showed up the day of the hearing and testified on behalf of the teachers' union and against the newly appointed Emergency Manager. DPS unsurprisingly lost the arbitration, costing the district millions in backpay.

d. Findings Regarding DPS' Staffing and Labor Decisions and Practices 1999 through 2016

The Interviewees' observation regarding DPS' staffing and labor decisions and practices were particularly insightful. When asked for their reflections on how staffing and labor issues were dealt with during the Subject Period under the CEO and various Emergency Managers, the Interviewees immediately stated that they appreciated the flexibility provided by the Emergency Managers' broad authority in these matters but were deeply troubled by the lack of accountability regarding how they used that authority. To the Interviewees' point, under every incarnation of the Emergency Manager laws, the state-appointed Emergency Managers possessed an incredible amount of authority over staffing and labor matters such as collective bargaining agreements. It appears that they were able to leverage that authority to effectively address some longstanding issues, such as staffing levels and ensure they remained proportionate to student enrollment, while also seemingly controlling wages by negotiating and/or implementing various cost-saving concessions. On the other hand, these issues were addressed with very little oversight and/or accountability. As a result, countless students were educated by substitutes, who may not have been certified in the subject matter they were teaching, for as long as an entire school year. Additionally, DPS once again engaged in the shuffling of employees' funds and the creation of additional long-term debt, and then the premature termination of a program it had negotiated with

⁴⁴ Exhibit 8.

the union. Therefore, the impact on DPS and its students of some of these decisions may never truly be known or entirely quantifiable.

IV. DPS' DECISIONS AND PRACTICES REGARDING THE MANAGEMENT OF ACADEMICS, ENROLLMENT AND STUDENT PERFORMANCE

a. DPS' Academics

Despite some initial gains that were quickly erased while the Reform Board and CEO ran DPS, the academics of DPS' students suffered during the Subject Period.⁴⁵ For example, DPS' test scores continued to lag behind state averages in almost every category.⁴⁶ Studies conducted by the National Assessment for Educational Progress indicate that by 2013, only 4 percent of 4th-grade students were proficient in math and only 7 percent were proficient in reading.⁴⁷ While this was an improvement from 2009, DPS students were scoring consistently lower than the state averages by roughly 35 points in math and 30 points in reading. In fact, regarding both the 4th and 8th grade reading and math score trends, DPS was consistently lowest compared to several other major urban cities including Chicago, Milwaukee, and Cleveland.⁴⁸ Unlike other areas reviewed, there seem to have been very few efforts to address issues such as unacceptable dropout rates, lack of teacher accountability, and system-wide funding inequities in the area of academics. Focused improvement in any of these areas may have had a significant positive impact on DPS' academic operations and overall student achievement. Even a few of the major academic initiatives that were attempted during the Subject Period, such as the formation of the Education Achievement Authority (the "EAA"), were primarily driven by the state.⁴⁹ It appears as if DPS' state-appointed leadership, especially the Emergency Managers, were more focused on trying to fix DPS' finances and may have somewhat neglected DPS' academics. One observer who conducted a study of this issue, bluntly concluded that "[t]he data analysis revealed that there were no significant education reforms in Detroit Public Schools from 1999-2014."⁵⁰ A DPS teacher that he interviewed for his study echoed this sentiment, stating that "I cannot think of one impactful initiative the Detroit Public Schools instituted from 1999–2014 on a district level."⁵¹ This laissez-faire approach towards DPS' academics resulted in a school district that failed to implement any significant district-wide best educational practices for almost two (2) decades, which reduced its ability to recruit and retain students. Once again, it is hard to calculate the impact of this potential failure as countless students may have been deprived of important educational opportunities and left unprepared to move forward with their education and/or careers.

b. The Fight for Control of DPS' Academics

The lack of initiative regarding DPS' academic operation is made even more puzzling by the fact that DPS' Emergency Manager, Governor Snyder, and the state's legislature went to great

⁴⁵ Exhibit 12.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Lori Higgins, "EAA's End Returns Schools to Detroit Fold," *Detroit Free Press*, April 29, 2017.

⁵⁰ Shaun Michael Black, "An Examination of Urban School Governance Reform in Detroit Public Schools, 1999-2014," at 117, *Wayne State University Dissertations*, Paper 1429 (2016).

⁵¹ *Id.*

lengths to assert their collective authority over DPS' academics. In 2009, after the appointment of DPS' first Emergency Manager pursuant to Public Act 72 of 1990 ("PA 72"), the elected board still retained their offices, but were considered powerless and largely ignored by the new Emergency Manager. In 2011, DPS was facing yet another financial crisis in the form of a potential operational deficit of hundreds of millions of dollars. Without meeting or having any discussions with the elected school board, the Emergency Manager announced that he would be shutting down nearly half of DPS' schools, conducting massive layoffs of teachers and staff, and drastically increasing class sizes throughout DPS.

The elected board felt strongly that the Emergency Manager's proposed sweeping reductions had exceeded the scope of his authority under PA 72 and responded by filing for an injunction to halt his plans to shutter half of DPS. In its filings, the elected board claimed that the Emergency Manager's reductions were so drastic that they would materially impact the academics and learning environment of DPS, which the Emergency Manager did not have the authority to do, as PA 72 only gave him authority over DPS' finances. The judge in the matter agreed with the board and granted its request for an injunction. In February 2011 the judge held that Emergency Managers' powers were not all encompassing and ordered DPS' Emergency Manager to cede academic control back to the elected board, as well as to cease interference with the board and its duties.⁵²

Despite a seeming reluctance of the Emergency Manager to address DPS' academic operations and programs, this was now deemed a high priority by not only the Emergency Manager, but also his supporters in Lansing. In March 2011, less than sixty (60) days after the judge's ruling granting the elected board authority over DPS' academics, Governor Snyder and the Michigan legislature repealed PA 72, which DPS' Emergency Manager had been appointed under, and replaced it with Public Act 4 of 2011 ("PA 4"), which expressly gave Emergency Managers in school districts authority over academics.⁵³ This new law did not last long, however, as PA 4 was repealed by statewide voter referendum in 2012. This issue was so important, however, that less than thirty (30) days after voters had struck down PA 4, the Michigan legislature passed another version of the legislation, making sure to clarify that Emergency Managers in school districts had authority over academics. Language regarding appropriations was added to the legislation, which made this version immune from another voter referendum.⁵⁴

It was apparently important to the Emergency Manager and his allies in Lansing that he and any subsequent Emergency Managers have sole authority over DPS' academic operations and programs. This arguably creates a certain responsibility on the part of the Emergency Manager as well as the State of Michigan regarding DPS' students' academic performance during the Subject Period and begs the question of what any of the Emergency Managers did regarding DPS' academics and the impact on student performance.

⁵² Exhibit 9.

⁵³ Exhibit 10 at Sec. 17(1).

⁵⁴ Exhibit 11.

c. The Outsourcing of DPS' Academics

As stated above, DPS' Emergency Managers tended to focus on DPS' finances and operations. This resulted in a certain amount of neglect of DPS' academic operations and programs throughout the Subject Period. A notable exception occurred in July 2009, when early in his tenure and armed with \$20 million in one-time Title I federal stimulus money, the Emergency Manager made a proposal to fundamentally alter how DPS was providing instructional services at the high school level. His proposed solution demonstrated how he and most likely his successor Emergency Managers viewed their role regarding DPS' academics. In short, he proposed engaging four (4) educational management companies to "assist" with running the day-to-day operations of seventeen (17) of DPS' twenty-two (22) remaining high schools.⁵⁵ Provided with both the funds and authority necessary to directly have a meaningful impact on DPS' academic operation and student achievement, he opted to instead outsource the task to an outside third party. Moreover, it did not go unnoticed that the Emergency Manager had proposed the same operational model used by many charter schools, who often utilize third-party companies to manage the day-to-day operations of their schools. Therefore, despite the legal and political struggles to establish the Emergency Manager's authority over the academics of DPS, he did not demonstrate a genuine desire to be directly engaged in DPS' most critical function.⁵⁶

d. Decisions and Practices Regarding Enrollment

During the Subject Period, some of the factors that significantly influenced DPS' declining enrollment were beyond the control of anyone at DPS. For instance, the U.S. Census Bureau estimates that in 1999 the population of the City of Detroit was just over 975,000, however, by 2016 the population had dropped to 672,795. The city had lost nearly one third of its population in less than two (2) decades, which would inevitably lead to a smaller student population.⁵⁷ Also, of particular import to a community school district, the entire State of Michigan experienced a noticeable and continuing drop in its birth rate just prior to and during the Subject Period. From 1989 to 2016, Wayne County experienced a 41% reduction in the number of births each year. As a result, in addition to there being less people in the City of Detroit, even those that still lived there were having less children, which further reduced the potential student population.⁵⁸ Both of these are factors out of the control of DPS' leadership that may have had a significant impact on DPS' ability to attract and retain students during the Subject Period.

Although the aforementioned factors may have been out of the control of DPS' state-appointed leadership, many other important factors could have been addressed. First, the

⁵⁵ The four educational management companies hired were: Edison Learning, Institute of Student Achievement, EdWorks and Model Secondary Schools Project.

⁵⁶ It should be noted that the Emergency Manager's plan for the management of DPS' high schools coupled with his strategy of an aggressive advertising campaign failed to stop the flow of students out of DPS. Moreover, DPS projected that it would lose another 70,000 students by 2014, which would cripple DPS' operations. Facing a mounting operational deficit and dire predictions regarding future enrollment, it was at this point the Emergency Manager proposed the plan to shutter half of DPS' schools mentioned above.

⁵⁷ Christine Ferretti, Nicquel Terry and Christine MacDonald, "Population Slide Slows in Detroit," *The Detroit News*, May 25, 2017.

⁵⁸ Julie Mack, "Michigan Birth Rate Ties Record Low; See Numbers for Your County," *MLive*, June 11, 2018.

aforementioned years with no real focus on DPS' academic operations undoubtedly had a negative impact on enrollment, as there was little offered that would entice students and parents to come to DPS and/or remain members of its educational community. This factor became especially important after the passage of Proposal A, which was purposely designed to make it easier for students to attend the school of their choice. It was therefore somewhat predictable that in the absence of a strong academic program, DPS would continue to lose students to surrounding districts and charter schools.

Likely one of the most significant factors that led to the decline in enrollment was the rapid expansion of charter schools in the City of Detroit during the Subject Period.⁵⁹ Faced with this challenge, DPS' Emergency Managers exhibited inconsistent responses. Some Emergency Managers seemed to view the quickly multiplying charter schools as competition for much needed funding and took purposeful action to curtail further expansion of the new educational alternative in the city. Others Emergency Managers seemed to view the charter schools as potential partners in education and actually facilitated their growth by allowing them to use DPS' facilities, even having DPS charter schools that would ultimately compete with the district. Although opinions may differ regarding which of these strategies DPS should have adopted, it is undeniable that the number of charter schools in Detroit increased exponentially during the Subject Period, and that DPS' students and the corresponding funding flocked to these new educational opportunities.

e. Findings Regarding DPS' Academic Operations and Enrollment 1999-2016

There was perhaps no more significant shortcoming of DPS and its leaders during the Subject Period than the failure to address DPS' declining academics and enrollment. After Proposal A was enacted, funding became inextricably linked to enrollment, and regardless of what promises were made, there is little reason to believe that DPS would have ever made any meaningful gains in enrollment without first improving its academic programs and performance. Despite this, it appears that DPS' academic program received little attention from Emergency Managers, who instead focused on DPS' finances. This seeming neglect of the academic program may have accelerated the decline in enrollment, as the data demonstrates that even students who were already at DPS schools were leaving DPS for other educational opportunities.

⁵⁹ Kate Zernike, "A Sea of Charter Schools in Detroit Leaves Students Adrift," *The New York Times*, June 28, 2016.

CONCLUSION

Without input or consent from DPS or its electorate, for most of the time period of 1999 through 2016, the State of Michigan effectively took over the operation of DPS. Despite the intent when this takeover was first initiated, in every area reviewed, DPS is significantly worse off after state rule. District funds and assets, including its property and buildings, were squandered in questionable real estate transactions that lacked not only due diligence, but also transparency. Buildings, both occupied and unoccupied, were also allowed to waste away due to neglect or a failure to provide routine maintenance services. Also, DPS' finances worsened significantly, as the state and its agents failed to address the structural operational issues plaguing DPS and align DPS' expenses with its revenues. This led to larger and larger operational deficits and cash flow challenges that would eventually cripple DPS' operation and almost drive DPS into bankruptcy. Moreover, during this entire time, the state did not successfully address DPS' rapidly declining enrollment as parents and students, provided with no incentives to stay, poured out of DPS to competing school districts and charter schools in the City of Detroit. Instead of effectively dealing with these issues, the state's Emergency Managers engaged in a number of borrowing and debt conversion schemes that have resulted in debts that will have to be repaid for years to come. Maybe most importantly, the state failed to have any meaningful impact on student achievement, and countless students have suffered.

In Michigan, public official's powers are recognized as fiduciary. They are expected to use these powers to protect, advance, and promote the interest of the public that they serve.⁶⁰ The specific scope of an Emergency Manager's fiduciary duty owed to the local government electorate during a declared fiscal crisis has yet to be fully tested in the courts, but it would be difficult to argue that they are completely immune from accountability for decisions that result in harm to the entity they are appointed to assist. DPS is potentially an example of this, where the appointment of successive Emergency Managers for the express purpose of solving DPS' financial challenges seemingly had the exact opposite effect and left DPS on the brink of insolvency. This resulted in millions of dollars in damages to both DPS and the City of Detroit, the loss of value of DPS' real property that will never be recovered, and students who suffered when their education seemingly became less of a priority than the endless financial struggles of DPS.

As a final consideration, it would be presumptuous to assume that the issues that occurred while the state and its agents were in control of DPS would not have occurred if some alternative form of governance had been in place. As many have already observed, many of DPS' challenges are rooted in the fact that DPS grossly is underfunded, and that the state's current funding mechanisms are inadequate and dysfunctional. It would therefore be speculative to presume that another governing body, elected or not, would have been able to avoid these pitfalls and somehow address the structural operational and financial issues of DPS.

⁶⁰ See Opinion No. 7184, Office of the Attorney General of the State of Michigan, 2006 Mich AG LEXIS 1; See also *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149; 627 N.W.2d 247 (2001).

EXHIBIT 1

Detroit Public Schools - Events and Governance Timeline

Confidential
Attorney-Client Privileged
Last Updated: 1/11/2019

DPS Controlling Authority		Year	Type	Event
Elected School Board	F	1994		Proposal A approved by voters. Schools are funded via state aid, and funding follows students to alternative district/charters schools
	P			DPS issues 1.5 billion dollars in bonds for the upgrade of facilities
Reform Board (Governor-Mayor Appointed)	I	1999		P.A. 10 of 1999 adopted, allowing the Governor and Mayor to appoint school board members
	I			Governor-Mayor appointed reform school board sworn in
	S			Dr. David Adamany hired as DPS interim CEO while search for permanent CEO is conducted
	S	2000		Dr. Kenneth Burnley is appointed Chief Executive Officer
	P	2002		DPS makes a questionable purchase of a significant interest in the Fisher building and relocates its headquarters to the same
	I	2003		Jennifer Granholm elected Governor of the State of Michigan
	P	2004		DPS completes construction of one of the most expensive high schools in America with various cost overruns (Cass Tech)
	O			Contractor operating DPS Risk Management department completes a number of questionable wire transfers to various vendors of approximately \$40,000,000
	F			DPS experiences escalating student losses, which results in a \$198 million deficit
	F	2005		DPS refinances \$210 million State Aid Note into long-term debt that matures in June 2020
	I			Electorate votes to dissolve the Reform School Board and return to an elected board

I - Informational
F - Financial
O - Operational
P - Property
S - Staffing

Detroit Public Schools - Events and Governance Timeline

Confidential
Attorney-Client Privileged
Last Updated: 1/11/2019

Year	Type	Event	DPS Controlling Authority
2006	I	Elected school board sworn in	Elected School Board
	S	William Coleman appointed Superintendent of DPS	
	I	DPS student enrollment drops to 117,567	
2007	O	Discovered that DPS staff members made questionable expenditures on travel, hotel and meals in excess of \$3,000,000	Elected School Board
	S	William Coleman resigns from DPS, while under FBI investigation	
	S	Elected board hires Dr. Connie Calloway is hired as Superintendent of DPS	
2008	F	DPS deficit reaches \$400 million	Elected School Board
	O	Financial emergency declared pursuant to Public Act 72 of 1990	
	S	Elected school board terminates Dr. Connie Calloway	
2009	S	Governor Jennifer Granholm appoints Robert Bobb as Emergency Financial Manager of DPS	Emergency Financial Manager
	O	Robert Bobb hires Edison Learning for \$20,000,000 to manage 17 DPS schools	
	I	DPS electorate approves \$500 million bond for capital improvements	
	F	Robert Bobb implements the Termination Incentive Plan to address the District's cash flow challenges	
2010	F	DPS refinances and converts \$231 million of a \$420 million State Aid Note into long term debt	Emergency Financial Manager
	S	DPS receives \$100 million in concessions from the Union	
	O	Wayne County Circuit Court rules in favor of the Board, and holds that they have authority of DPS' academics	

I - Informational
F - Financial
O - Operational
P - Property
S - Staffing

Detroit Public Schools - Events and Governance Timeline

Confidential
Attorney-Client Privileged
Last Updated: 1/11/2019

Year	Type	Event	DPS Controlling Authority
2011	I	Rick Snyder elected Governor of the State of Michigan	Emergency Manager
	I	Emergency Manager Act (Public Act 4 of 2011) adopted	
	S	Roy Roberts appointed Emergency Manager of DPS	
	O	Educational Achievement Authority is created	
	I	Public Act 277 of 2011 adopted and lifts the cap on charter schools in Michigan	
	F	Michigan Finance Authority allows DPS to refinance the remainder of original special purpose bonds	
	F	EAA borrows \$6,000,000 from DPS	
	I	Michigan voters repeal Public Act 4 of 2011 (Emergency Manager Law)	
	I	State of Michigan enact PA 436 of 2012 Emergency Manager Act, replacing the repealed law	
2013	I	City of Detroit files for bankruptcy	
2014	S	Veronica Conforme appointed as Chancellor of the EAA	Transition Manager
	S	Jack Martin appointed Emergency Manager of DPS	
	S	Darnell Early appointed Emergency Manager of DPS	
2015	F	Michigan Finance Authority issues 82.8 short-term notes to refinance a portion of the original borrowing	
	F	DPS legacy costs and other liabilities (operating liabilities and capital liabilities) amount to \$3,527,800,000	pp
2016	S	Governor Snyder appoints Judge Steven Rhodes as Transition Manager of DPS	
	O	Educational Achievement Authority dissolved	
	O	To manage growing obligations of the District, DPS split into two entities: DPSCD (current educational school district and DPS (debt holder)	
2017	I	Elected school board sworn in	pp
2018	P	Facilities Assessment completed detailing over \$500,000,000 in maintenance and repairs needed for DPS' capital infrastructure	

I - Informational
F - Financial
O - Operational
P - Property
S - Staffing

EXHIBIT 2

Act No. 10
Public Acts of 1999
Approved by the Governor
March 26, 1999
Filed with the Secretary of State
March 26, 1999
EFFECTIVE DATE: March 26, 1999

STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999

Introduced by Senators DeGrow, Emerson, Steil, Sikkema, Shugars, Schuette, Bennett, Stille, McCotter, Schwarz, Gougeon, Rogers, Dunaskiss, Goschka and McManus

ENROLLED SENATE BILL No. 297

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, and intermediate school districts; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, and intermediate school districts; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," by amending sections 402 and 471a (MCL 380.402 and 380.471a), section 471a as amended by 1982 PA 71, and by adding part 5A and section 449.

The People of the State of Michigan enact:

PART 5A

APPOINTMENT OF SCHOOL REFORM BOARDS

Sec. 371. As used in this part:

(a) "Chief executive officer" means the chief executive officer appointed for a qualifying school district under section 374.

(b) "Mayor" means the mayor of the city in which a qualifying school district is located.

(c) "Qualifying school district" means a school district of the first class under part 6.

Sec. 372. (1) Not later than 30 days after the effective date of the amendatory act that added this part, the mayor shall appoint a school reform board for a qualifying school district.

(2) A school reform board established under this section shall consist of the following 7 members:

(a) Six members appointed by the mayor.

(b) For a period of 5 years after the effective date of the amendatory act that added this part, the superintendent of public instruction or his or her designee. After this period, the mayor shall appoint the seventh member of the school reform board.

(3) A person who is a current member of the elected school board of a qualifying school district is not eligible for appointment as a member of the school reform board for that qualifying school district. Section 1101(1) does not disqualify any person from appointment to a school reform board under this section or from appointment as an officer under section 374. However, at least a majority of the appointed members of a school reform board must be school electors of the qualifying school district.

(4) Except for the superintendent of public instruction or his or her designee, members of a school reform board shall serve at the will of the mayor. The term of an appointed member shall be 4 years, except that of the members first appointed under subsection (2)(a), 2 shall be appointed for a term of 2 years, 2 shall be appointed for a term of 3 years, and 2 shall be appointed for a term of 4 years.

(5) If a member of a school reform board is removed from office by the mayor or is unable to complete his or her term, the mayor shall appoint a successor for the balance of the unexpired term. At the end of a member's term, the mayor shall appoint a successor or reappoint the member.

(6) The mayor shall call the first meeting of the school reform board and shall designate a chairperson of the school reform board from among its members. If there is a vacancy in the office of chairperson, the mayor shall designate a successor.

(7) At the first meeting of the school reform board, the school reform board may elect from among its members other officers as it considers necessary or appropriate. After the first meeting, the school reform board shall meet at least monthly, or more frequently at the call of the chairperson or if requested by 4 or more members.

(8) A majority of the members of the school reform board constitute a quorum for the transaction of business at a meeting of the school reform board. A majority of the members present and serving are required for official action of the school reform board.

(9) Members of the school reform board shall serve without compensation. However, members may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the school reform board.

Sec. 373. (1) Beginning on the effective date of the amendatory act that added this part, the powers and duties of the elected school board of the qualifying school district and of its secretary and treasurer are suspended unless and until a new school board is elected under section 375. However, until the expiration of each individual member's current term, the members of the elected school board of a qualifying school district may continue to meet as an advisory board to provide input to the school reform board on an advisory basis only. Notwithstanding section 417a or any board policy, bylaw, or resolution to the contrary, these advisory board members shall serve without compensation or reimbursement, and funds of the qualifying school district shall not be used to staff or otherwise support the advisory board in any way.

(2) Beginning on the effective date of the amendatory act that added this part, and until appointment of a school reform board for a qualifying school district under this part, all provisions of this act that would otherwise apply to the school board of the qualifying school district or to the school reform board or chief executive officer apply to the mayor, and the mayor immediately may exercise all the powers and duties otherwise vested by law in the board of the qualifying school district and in its secretary and treasurer, and all powers and duties of the school reform board or chief executive officer as provided under this part. Within 30 days after appointing a school reform board under this part, the mayor shall initiate a financial audit of the qualifying school district. The mayor shall provide the results of this audit to the school reform board.

(3) Upon appointment of a school reform board for a qualifying school district under this part, and until appointment of a chief executive officer under section 374, all provisions of this act that would otherwise apply to the school board of the qualifying school district or to the chief executive officer apply to the school reform board, and the school reform board immediately may exercise all the powers and duties otherwise vested by law in the board of the qualifying school district and in its secretary and treasurer, and all powers and duties of the chief executive officer as provided under this part.

(4) Upon appointment of a chief executive officer for a qualifying school district under section 374, all provisions of this act that would otherwise apply to the elected school board of the qualifying school district apply to the chief executive officer; the chief executive officer immediately may exercise all the powers and duties otherwise vested by law in the elected school board of the qualifying school district and in its secretary and treasurer, and all additional powers and duties provided under this part; and the chief executive officer accedes to all the rights, duties, and obligations of the elected school board of the qualifying school district. These powers, rights, duties, and obligations include, but are not limited to, all of the following:

(a) Authority over the expenditure of all school district funds, including proceeds from bonded indebtedness and other funds dedicated to capital projects.

(b) Rights and obligations under collective bargaining agreements and employment contracts entered into by the elected school board, except for employment contracts of those employees described in subsection (6).

(c) Rights to prosecute and defend litigation.

(d) Obligations under any judgments entered against the elected school board.

(e) Rights and obligations under statute, rule, and common law.

(f) Authority to delegate any of the chief executive officer's powers and duties to 1 or more designees, with proper supervision by the school reform board.

(5) In addition to his or her other powers, the chief executive officer appointed under this part may terminate any contract entered into by the elected school board of the qualifying school district except for a collective bargaining agreement. However, this subsection does not allow any termination or diminishment of obligations to pay debt service on legally authorized bonds. A contract terminated by a chief executive officer under this subsection is void.

(6) Beginning on the effective date of the amendatory act that added this part, and until appointment of a school reform board for a qualifying school district under this part, each employee of the qualifying school district whose position is not covered by a collective bargaining agreement is employed at the will of the mayor. Upon appointment of a school reform board for a qualifying school district under this part, and until appointment of a chief executive officer under section 374, each employee of the qualifying school district whose position is not covered by a collective bargaining agreement is employed at the will of the school reform board. Upon appointment of a chief executive officer for a qualifying school district under section 374, each employee of the qualifying school district whose position is not covered by a collective bargaining agreement is employed at the will of the chief executive officer.

(7) Not later than 90 days after the initial appointment of a chief executive officer under this part, and at least annually thereafter, the chief executive officer with the approval of the school reform board shall develop and submit to the school district accountability board created in section 376 a school district improvement plan that includes at least detailed academic, financial, capital, and operational goals and benchmarks for improvement and a description of strategies to be used to accomplish those goals and benchmarks. The plan also shall include an assessment of available resources and recommendations concerning additional resources or changes in statute or rule, if any, needed to meet those goals and benchmarks. The plan also shall include an evaluation of local school governance issues, including criteria for establishing building-level governance.

(8) A chief executive officer with the approval of the school reform board for the qualifying school district shall submit an annual report to the mayor, governor, school district accountability board created in section 376, and legislature and shall make the annual report available to the community in the qualifying school district. The annual report shall contain at least all of the following:

(a) A summary of the initiatives that have been implemented to improve school quality in the qualifying school district.

(b) Measurements that may be useful in determining improvements in school quality in the qualifying school district. These measurements shall indicate changes from baseline data from the school year before the appointment of the school reform board, and shall include at least all of the following:

(i) Standardized test scores of pupils.

(ii) Dropout rates.

(iii) Daily attendance figures.

(iv) Enrollment figures.

(v) High school completion and other pertinent completion rates.

(vi) Changes made in course offerings.

(vii) Proportion of school district resources devoted to direct educational services.

(c) A description of long-term performance goals that may include statewide averages or comparable measures of long-term improvement.

(9) A school reform board may organize and establish community assistance teams to work with the school reform board to implement a cohesive, full service community school program addressing the needs and concerns of the qualifying school district's population. The school reform board may delegate to a community assistance team the authority to devise and implement family, community, cultural, and recreational activities to assure that the academic mission of the schools is successful. The community assistance teams may also develop parental involvement activities that focus on the encouragement of voluntary parenting education, enhancing parent and family involvement in education, and promoting adult and family literacy.

(10) The mayor, superintendent of public instruction, state board, school district accountability board created in section 376, this state, the city in which a qualifying school district is located, a school reform board established under this part, or a chief executive officer or other officer appointed under section 374 is not liable for any obligation of or claim against a qualifying school district resulting from an action taken under this part.

Sec. 374. (1) Not later than 30 days after the school reform board is appointed, a school reform board established under this part shall appoint for the qualifying school district a chief executive officer. The appointment of a chief executive officer must be by a unanimous vote of the school reform board. The chief executive officer is employed at the will of the school reform board and has the powers and duties provided under this part.

(2) The chief executive officer, with the approval of the school reform board, shall appoint for the qualifying school district a chief financial officer, chief academic officer, chief operations officer, and chief purchasing officer. These officers are employed at the will of the chief executive officer.

(3) If a vacancy occurs in a position described in this section, a successor shall be appointed in the same manner as the original appointment.

Sec. 374a. For a period of 1 year after leaving office, a member of a school reform board appointed under this part or a chief executive officer of a qualifying school district or another officer appointed under section 374 is ineligible for election or appointment to any elective office of the qualifying school district or of the city in which the qualifying school district is located.

Sec. 375. (1) After the expiration of 5 years after the initial appointment of a school reform board in a qualifying school district under this part, the question of whether to retain the school reform board and the chief executive officer and the authority under this part to appoint the school reform board and the chief executive officer shall be placed on the ballot in the qualifying school district under this section.

(2) The question under subsection (1) shall be placed on the ballot in the qualifying school district at the next November general election occurring at least 90 days after the expiration of 5 years after the date of the initial appointment of the school reform board.

(3) The question under subsection (1) shall be in substantially the following form:

"Shall the school reform board and chief executive officer serving in _____ (name of qualifying school district) under part 5a of the revised school code be retained and shall the mayor of _____ (name of city in which the school district is located) retain the authority to appoint members of the school reform board? A vote in the affirmative continues the school reform board and chief executive officer in place in the school district and continues the authority of the mayor to appoint members of the school reform board. A vote in the negative will result in the election of a new elected school board as the governing body of the school district and will render the provisions of law establishing authority to appoint a school reform board inapplicable for this school district.

Yes ()

No ()".

(4) If the question under subsection (1) is approved by a majority of the school electors voting on the question either under subsection (1) or pursuant to subdivision (c), all of the following apply:

(a) The school reform board and chief executive officer continue in place in the qualifying school district.

(b) The authority of the mayor to appoint members of the school reform board continues in the qualifying school district.

(c) The question may not be placed on the ballot again in the qualifying school district until the expiration of 5 years after the election at which the question was approved. The question may be placed on the ballot again in the qualifying school district under this subdivision if petitions calling for the question to be placed on the ballot are filed with the county clerk for the county in which the qualifying school district is located not sooner than 4 years after the question was most recently on the ballot and if the petitions are signed by a number of school electors of the qualifying school district at least equal to 10% of the number of votes cast within the city in which the qualifying school district is located for secretary of state in the most recent November general election in which a secretary of state was elected. If those petitions are submitted and verified, the question shall be placed on the ballot in the qualifying school district at the next November general election occurring at least 5 years after the question was most recently on the ballot and at least 90 days after the petitions are submitted and verified.

(5) If the question under subsection (1) is not approved by a majority of the school electors voting on the question either under subsection (1) or pursuant to subsection (4)(c), all of the following apply:

(a) The school reform board shall arrange with local elections officials for election of a new elected school board for the school district. This election shall be at a special election held as soon as practicable, but not sooner than 90 days after the election under subsection (1). This election shall be conducted in the manner otherwise provided under this act for an initial school board election in a newly formed first class school district.

(b) Effective on the next July 1 following the election under subdivision (a), the new elected school board of the qualifying school district shall serve as the governing body of the qualifying school district and this elected school board and its secretary and treasurer shall be fully vested with all powers and duties that those officials had before the appointment of the school reform board.

(c) Effective on the next July 1 following the election under subdivision (a), the powers of the school reform board established for the qualifying school district under this part, of the chief executive officer, and of all other officers appointed under section 374 cease.

(d) Effective on the next July 1 following the election under subdivision (a), the provisions of this part do not apply to that qualifying school district.

Sec. 376. (1) The school district accountability board is created in the department. The school district accountability board consists of the following 5 members:

(a) The superintendent of public instruction.

(b) The state treasurer.

(c) The state budget director.

(d) Two members of the general public appointed by the governor with the advice and consent of the senate.

(2) The state treasurer shall serve as chairperson of the school district accountability board.

(3) The school district accountability board shall do all of the following with respect to a qualifying school district in which a school reform board has been established under this part:

(a) Receive and review the district improvement plan submitted under section 373.

(b) Monitor the progress being made by the school reform board in achieving the goals and benchmarks identified in the district improvement plan submitted under section 373.

(c) Based on the experience of the school reform board in its efforts to achieve reform, make recommendations to the governor for additional resources for the qualifying school district and on changes in statute or rule, if any, needed to achieve reform.

(4) The powers and duties of the school district accountability board are limited to a qualifying school district in which a school reform board is in place.

(5) The business that the school district accountability board may perform shall be conducted at a public meeting of the school district accountability board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) A writing prepared, owned, used, in the possession of, or retained by the school district accountability board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 402. A school district that has a pupil membership of at least 100,000 enrolled on the most recent pupil membership count day is a single first class school district governed by this part.

Sec. 449. All powers and duties of the school board of the first class school district and of its officers are subject to part 5a.

Sec. 471a. (1) The first class school district board may appoint a superintendent of schools for a term not exceeding 6 years pursuant to the first class school district board's bylaws. The board may employ assistant superintendents, principals, assistant principals, guidance directors, and other administrators who do not assume tenure in position for a term, not to exceed 3 years, fixed by the board and shall define their duties. Administrative and personnel services shall be provided on a centralized basis throughout the first class school district and shall not be established on a voting district basis. The employment shall be under written contract. Notification of nonrenewal of contract shall be given in writing not less than 90 days before the termination date of the contract of a superintendent of schools, and at least 60 days before the termination date of the contract of other administrators described in this subsection. If notification of nonrenewal is not given as required in this subsection, the contract is renewed for an additional 1-year period.

(2) A notification of nonrenewal of a contract of a person described in this section may be given only for a reason that is not arbitrary or capricious. The board shall not issue a notice of nonrenewal under this section unless the affected person has been provided with not less than 30 days' advance notice that the board is considering the nonrenewal together with a written statement of the reasons the board is considering the nonrenewal. After the issuance of the written statement, but before the nonrenewal statement is issued, the affected person shall be given the opportunity to meet with not less than a majority of the board to discuss the reasons stated in the written statement. The meeting shall be open to the public or a closed session as the affected person elects under section 8 of the open meetings act, 1976 PA 267, MCL 15.268. The failure to provide for a meeting with the board or the finding of a court that the reason for nonrenewal is arbitrary or capricious shall result in the renewal of the affected person's contract for an additional 1-year period. This subsection does not apply to the nonrenewal of the contract of a superintendent of schools.

(3) Except for certification requirements determined by the state board, the first class school district board shall have full power over employees and may specify the duties to be performed by them and fix the qualifications necessary for a position. The qualifications shall not conflict with the rules, regulations, or licensing laws of the state, county, or municipality governing qualifications of engineers or members of other trades.

(4) This section is subject to part 5a.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.

EXHIBIT 3



**DETROIT PUBLIC SCHOOLS
DETROIT, MICHIGAN**

Comprehensive Annual Financial Report

June 30, 2006

(With Independent Auditors' Report Thereon)

DETROIT PUBLIC SCHOOLS

Statistical and Other Information (Unaudited)

Ten-Year Summary of Governmental Funds Revenues and Expenditures

Year ended June 30, 2006

	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Revenues:										
Local sources	\$ 294,169,835	280,844,737	267,059,458	241,710,072	233,108,358	—	—	—	—	—
State sources	984,242,851	1,027,481,282	1,122,411,177	1,194,252,069	1,214,089,918	—	—	—	—	—
Federal sources	266,609,818	284,888,239	280,465,950	243,725,137	237,357,505	—	—	—	—	—
General operations	—	—	—	—	—	1,297,997,655	1,271,279,337	1,245,218,535	1,197,878,164	1,152,410,331
Special program operations	—	—	—	—	—	255,221,129	218,468,270	221,178,900	213,762,637	219,852,486
Auxiliary operations	—	—	—	—	—	881,474	37,102,162	35,134,044	36,347,857	36,069,451
Other financing sources:										
Bond/note proceeds	554,093,250	210,000,000	20,430,005	731,900,000	438,365,000	—	—	293,407,157	—	—
Premium from sale of bonds	—	—	—	23,969,451	35,879,604	—	—	—	—	—
Proceeds from school bond loan	—	932,243	31,205,494	—	—	—	—	—	—	—
Transfers in	21,128,011	9,941,469	1,916,975	65,395,563	58,301,303	6,649,053	—	11,541,759	11,543,270	11,490,780
Proceeds from sale of capital assets	228,675	1,133,610	747,045	9,071,440	—	—	—	—	—	—
Capital lease acquisition	—	—	—	—	—	—	—	2,613,195	—	—
Total revenues, other financing sources and special items	2,120,472,440	1,815,221,580	1,724,236,104	2,510,023,732	2,217,101,688	1,560,749,311	1,526,849,769	1,809,093,590	1,459,531,928	1,419,823,048
Expenditures:										
Instruction	773,046,823	878,408,647	939,338,567	891,894,493	875,700,585	698,251,247	537,667,895	508,180,769	467,509,867	457,263,214
Special program operations	—	—	—	—	—	269,979,428	171,554,877	174,481,214	169,495,717	169,301,905
Supporting services	614,815,850	652,896,930	667,027,335	651,198,490	626,045,607	516,718,280	427,692,759	417,625,780	374,221,979	352,132,566
Auxiliary operations	—	—	—	—	—	37,701,762	34,606,544	33,237,398	31,764,690	31,553,702
Community services	4,804,658	5,729,048	6,836,155	5,790,337	5,205,218	—	—	—	—	—
Food services	43,819,136	45,628,321	49,254,075	46,560,407	43,885,382	—	—	—	—	—
Athletics	3,546,883	2,868,955	1,916,264	1,716,264	2,238,977	—	—	—	—	—
Other expenditures	7,352,515	1,127,291	6,953,052	1,967,009	13,126,270	2,988,144	282,249,591	261,915,317	260,085,839	278,241,439
Principal retirement	47,809,942	42,886,898	40,335,939	42,205,000	23,854,577	15,568,932	31,916,959	45,686,937	33,315,300	30,275,800
Payment of interest	64,564,284	76,017,933	78,679,422	54,755,602	38,036,311	24,291,123	23,494,924	21,096,687	18,310,560	20,871,505
Capital outlay	126,854,552	250,955,186	281,306,187	357,868,901	353,465,550	117,775,630	117,885,739	100,581,754	26,762,147	21,807,865
Other financing uses:										
Payment to bond escrow agent	549,186,565	—	17,092,833	16,043,748	—	—	—	—	—	—
Transfers out	21,128,011	9,941,469	1,916,975	65,395,563	58,301,303	6,649,053	—	11,541,759	11,543,270	11,490,780
Total expenditures and other uses	2,256,929,219	1,966,460,678	2,090,657,515	2,135,395,814	2,039,879,780	1,689,923,599	1,627,069,288	1,574,347,635	1,393,009,369	1,372,938,776
Net change in fund balances	\$ (136,456,779)	(151,239,098)	(366,421,411)	374,627,918	177,221,908	(129,174,288)	(100,219,519)	234,745,955	66,522,559	46,884,272

Notes:
Prior to 2001, auxiliary operations included Food Service and Athletics.
In 2001, capital outlay was included as a component of other expenditure groups and was not broken out separately.
In 2002, expenditure and revenue classifications were modified to conform with GASB No. 34.

EXHIBIT 4

Detroit Public Schools

Comprehensive Annual Financial Report with Supplemental Information for the Fiscal Year Ended June 30, 2016

Detroit Public Schools

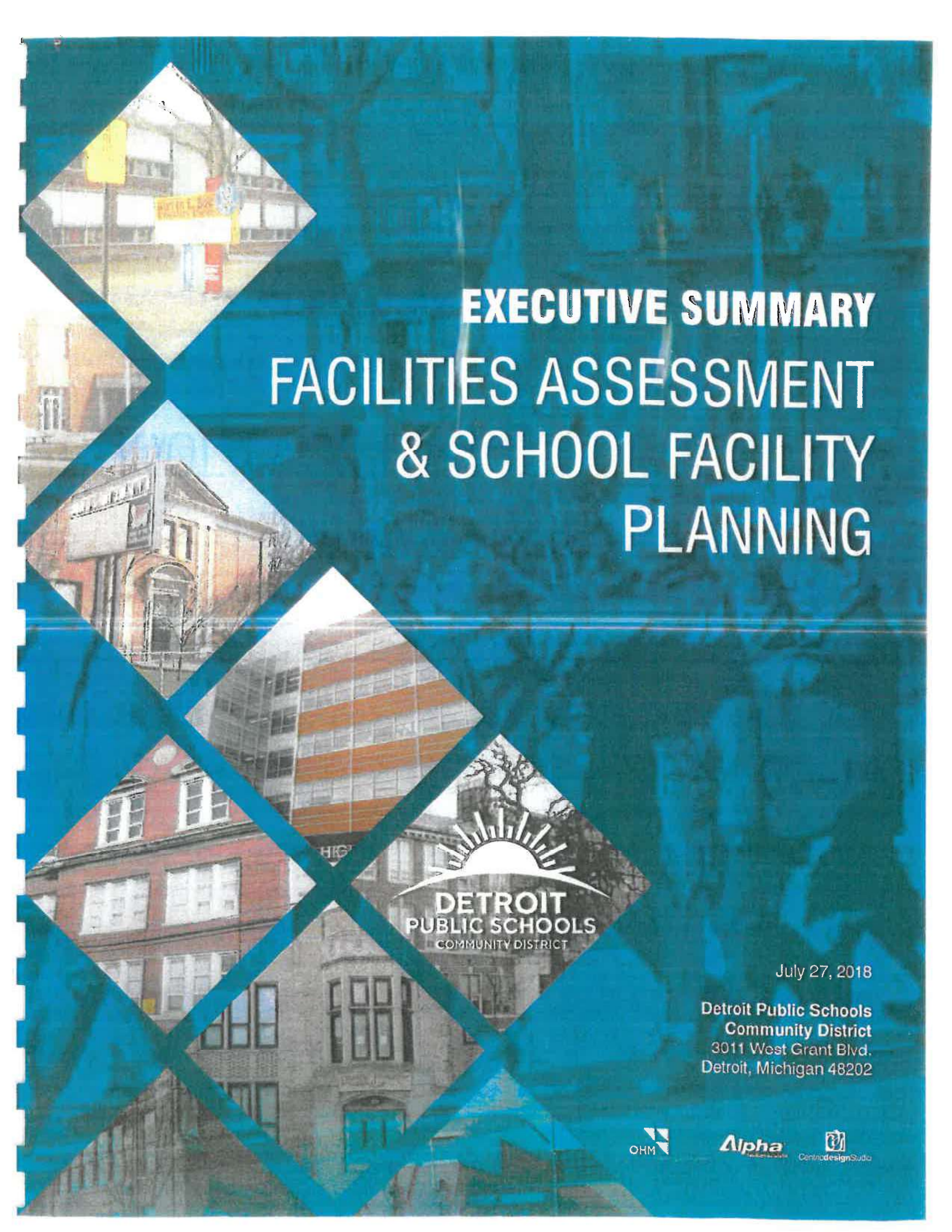
Fund Balances, Governmental Funds (Unaudited) Last Ten Fiscal Years

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
General Fund:										
Reserved	\$ 1,572,839	\$ 2,589,003	\$ 3,198,678	\$ 1,595,185	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Unreserved (deficit)	(5,350,257)	(1,423,131,755)	(222,168,097)	(328,894,450)	-	-	-	-	-	-
Nonspendable	-	-	-	-	509,585	72,589	1,725,059	1,884,258	2,252,428	-
Restricted	-	-	-	-	-	7,089,577	198,967	925,808	925,808	-
Unassigned (deficit)	-	-	-	-	(284,438,900)	(83,465,550)	(95,805,950)	(172,270,373)	(219,110,153)	(251,587,254)
Total General Fund	(3,777,418)	(139,724,752)	(218,969,419)	(327,299,265)	(283,929,315)	(76,303,384)	(93,881,924)	(169,460,307)	(215,931,917)	(251,587,254)
Other governmental funds:										
Reserved	86,603,515	6,176	35,261	5,925	-	-	-	-	-	-
Unreserved (deficit), reported in:										
Special revenue funds	1,088,220	1,952,408	2,243,944	6,733,742	-	-	-	-	-	-
Debt service funds	-	9,857,109	20,729,314	12,740,999	-	-	-	-	-	-
Capital project funds	-	59,075,288	47,370,858	292,671,361	-	-	-	-	-	-
Nonspendable	-	-	-	-	6,900	27,063	25	30	23,036	-
Restricted	-	-	-	-	271,404,958	93,379,815	34,738,751	48,036,948	41,304,332	29,406,325
Unassigned (deficit)	-	-	-	-	-	-	(355,708)	(541,457)	(1,325,237)	-
Total other governmental funds	87,691,735	70,890,981	70,379,377	312,152,027	271,411,858	93,406,878	34,383,068	47,495,521	40,002,131	29,406,325
Total fund balance (deficit)	\$ 83,914,317	\$ (68,833,771)	\$ (148,590,042)	\$ (15,147,238)	\$ (12,517,457)	\$ 17,103,494	\$ (59,498,856)	\$ (121,964,786)	\$ (175,929,786)	\$ (222,180,929)

Note: In 2011, the classification of fund balances changed due to the Implementation of GASB Statement No. 54.

Source: District financial data

EXHIBIT 5



EXECUTIVE SUMMARY FACILITIES ASSESSMENT & SCHOOL FACILITY PLANNING



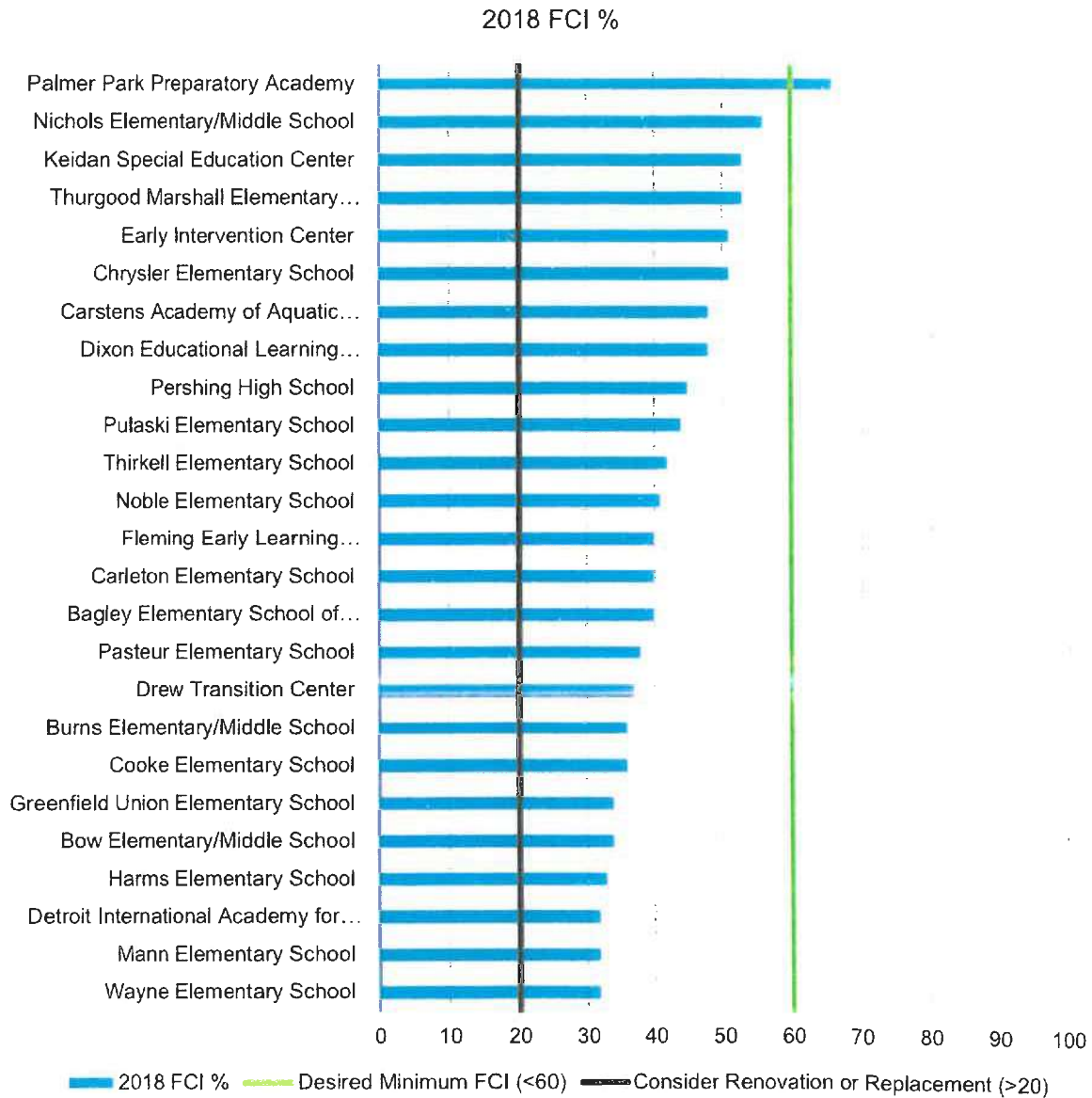
July 27, 2018

Detroit Public Schools
Community District
3011 West Grant Blvd.
Detroit, Michigan 48202



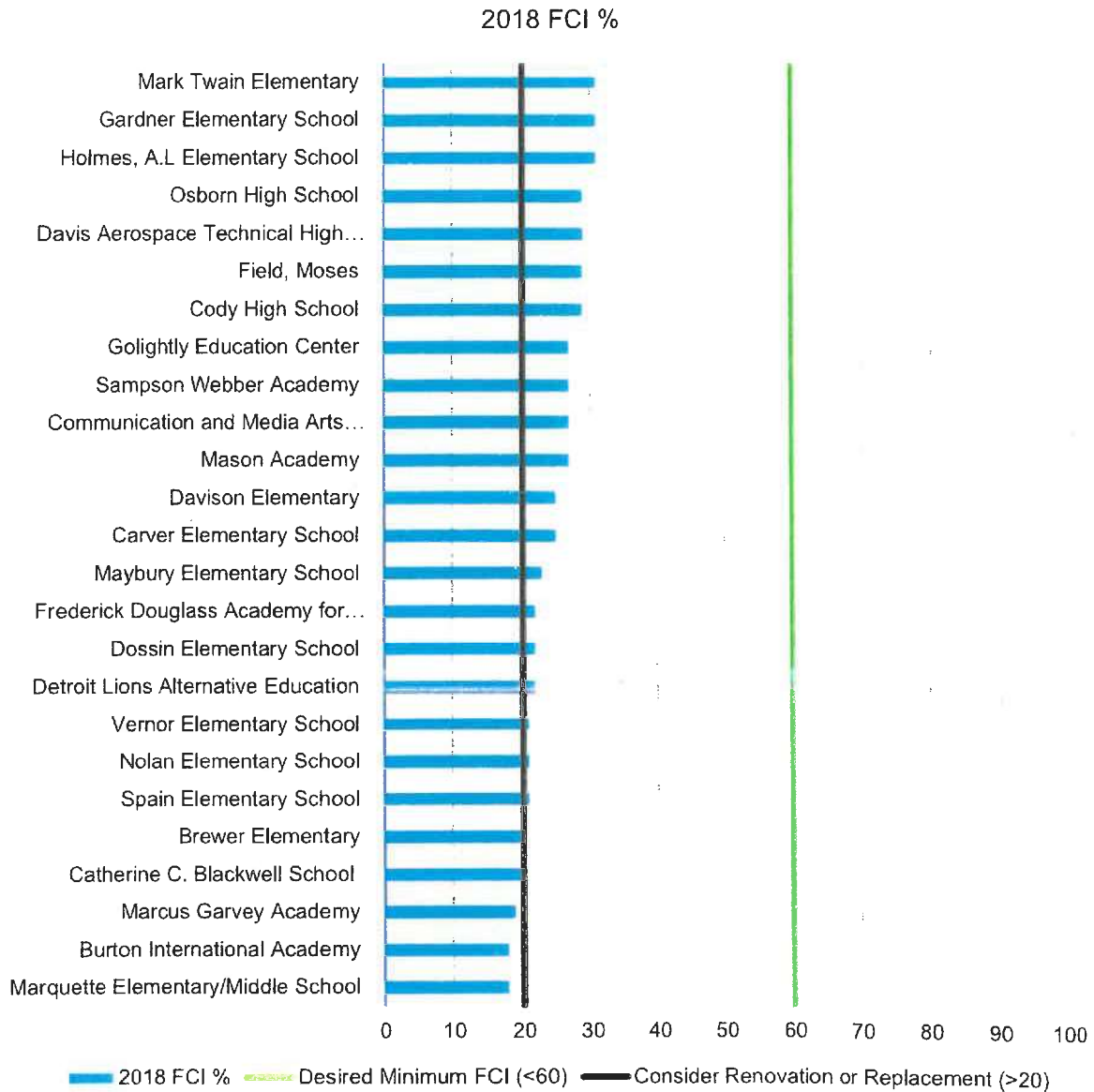
The information shown in the figure below shows the current (2018) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the current FCI.

Figure 2. Current Facility Condition: Detroit Public Schools Community District



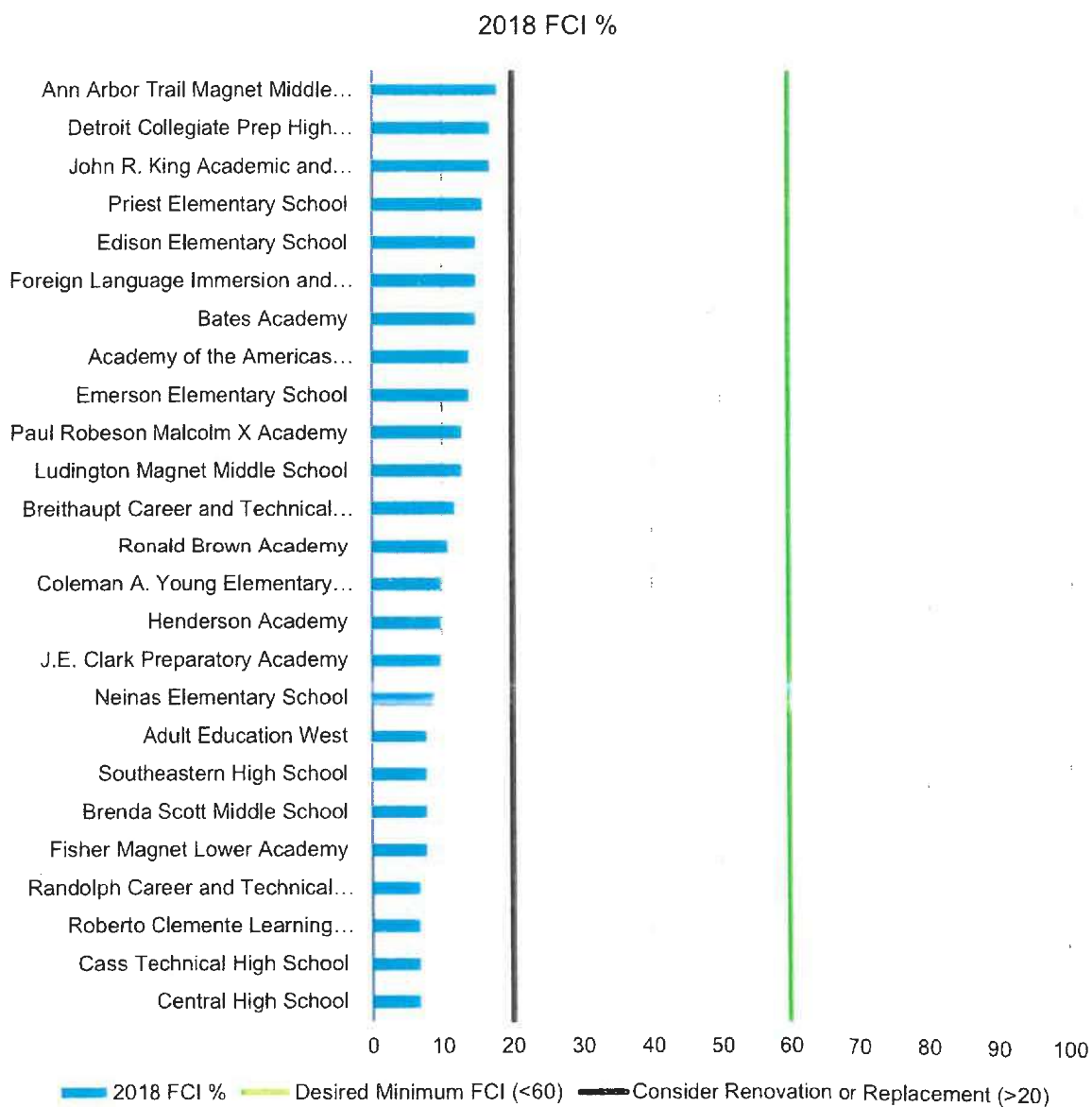
The information shown in the figure below shows the current (2018) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the current FCI.

Figure 3. Current Facility Condition: Detroit Public Schools Community District



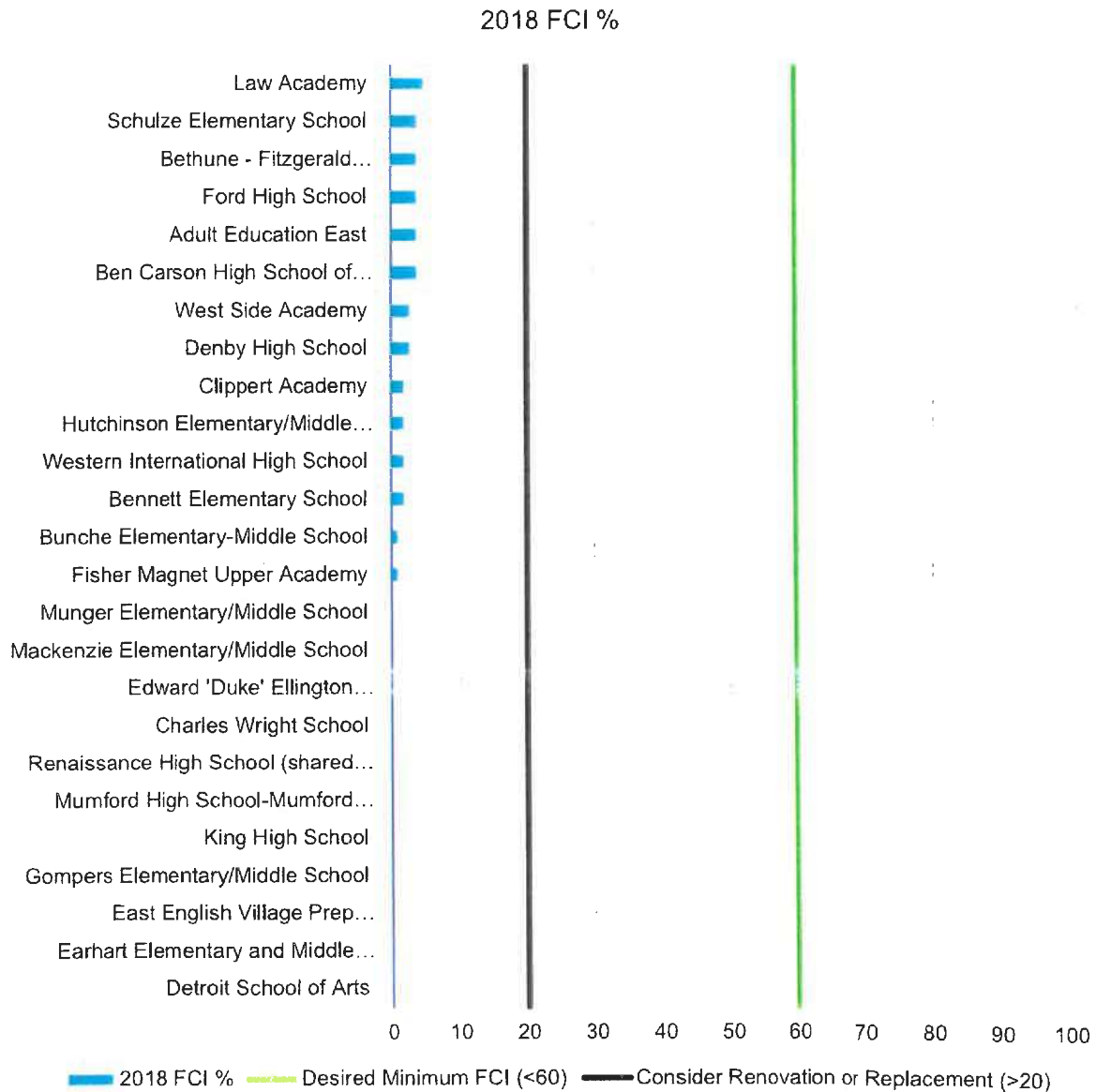
The information shown in the figure below shows the current (2018) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the current FCI.

Figure 4. Current Facility Condition: Detroit Public Schools Community District



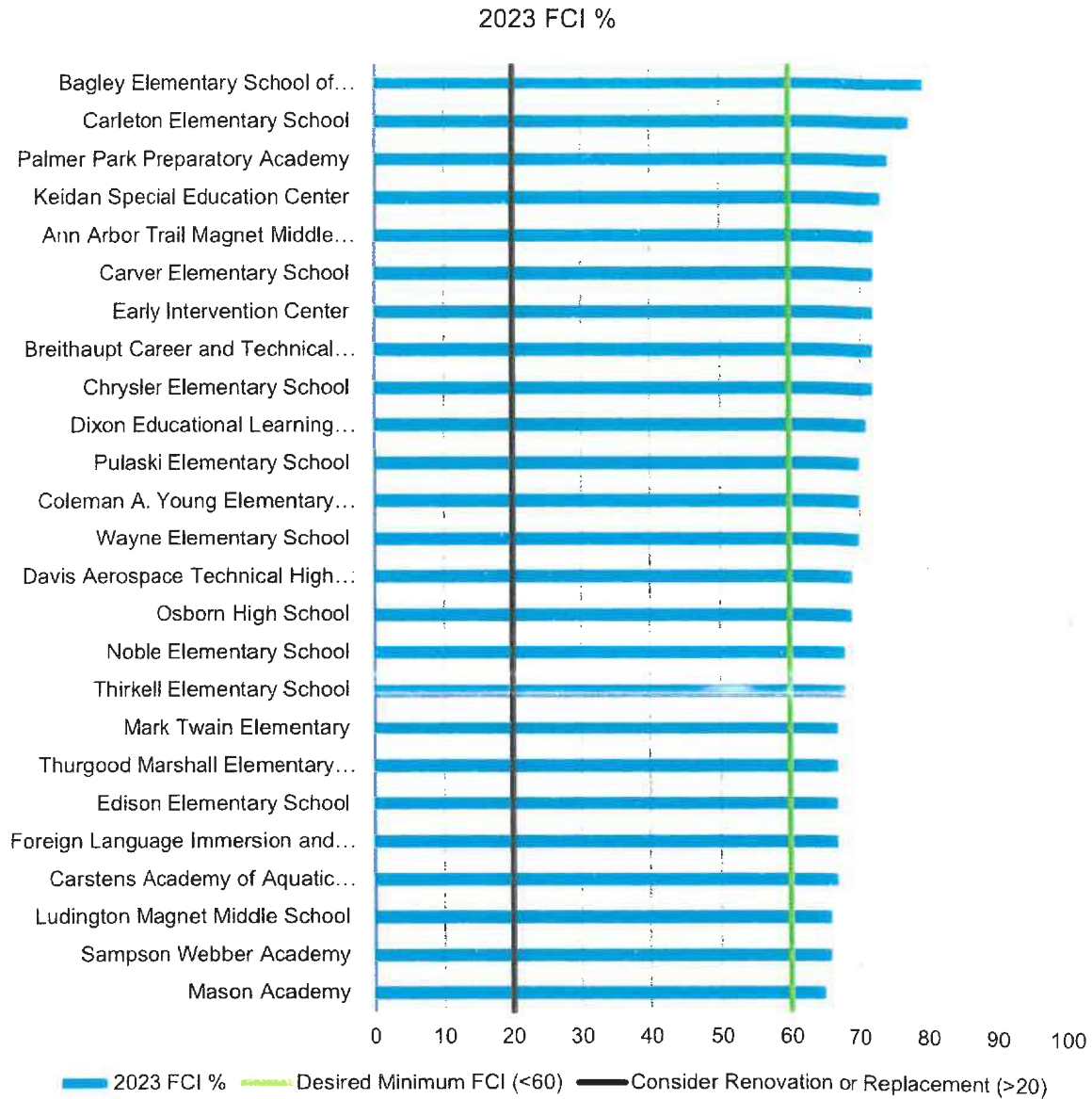
The information shown in the figure below shows the current (2018) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the current FCI.

Figure 5. Current Facility Condition: Detroit Public Schools Community District



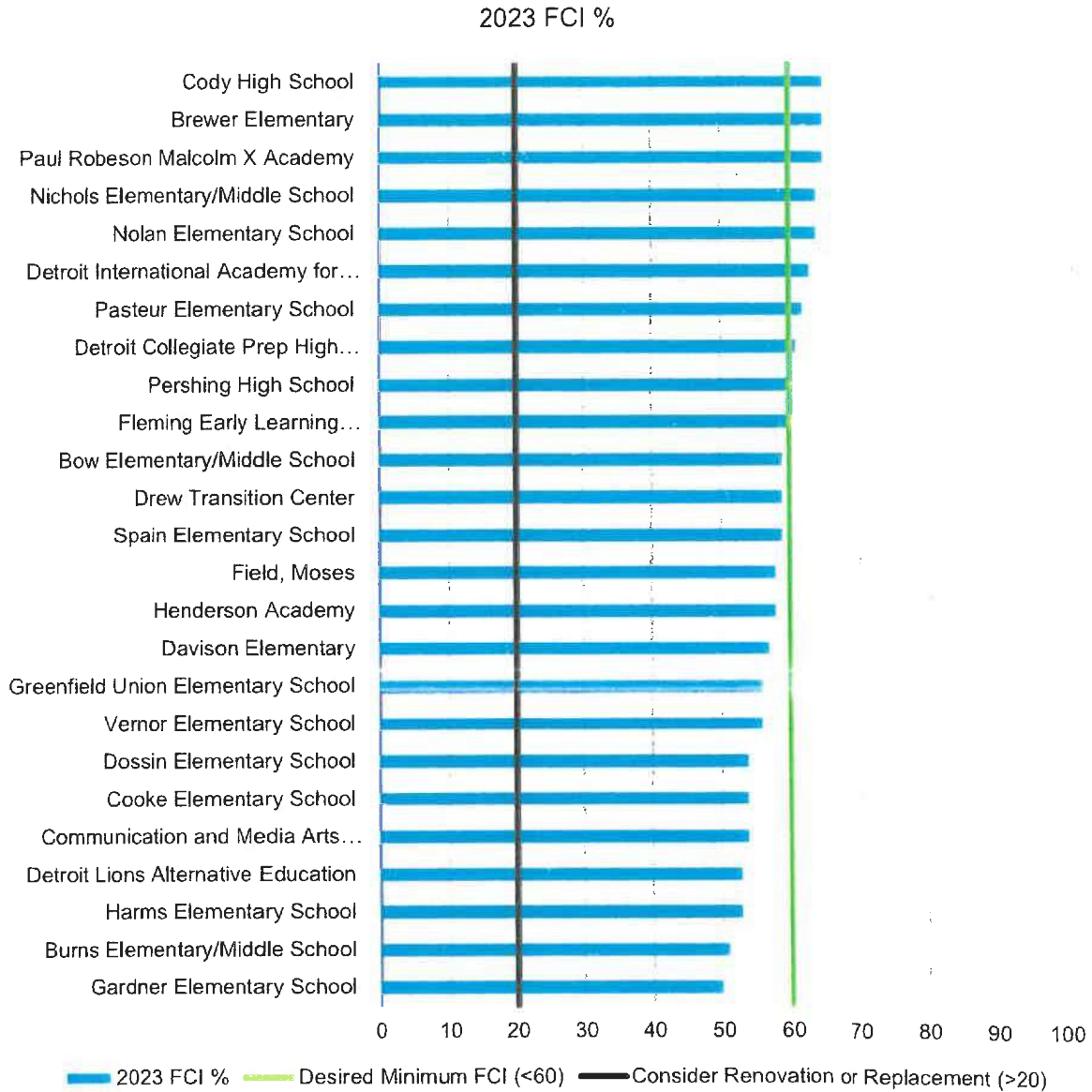
The information shown in the figure below shows the forecast (2023) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the forecast FCI.

Figure 6. Forecast Facility Condition: Detroit Public Schools Community District



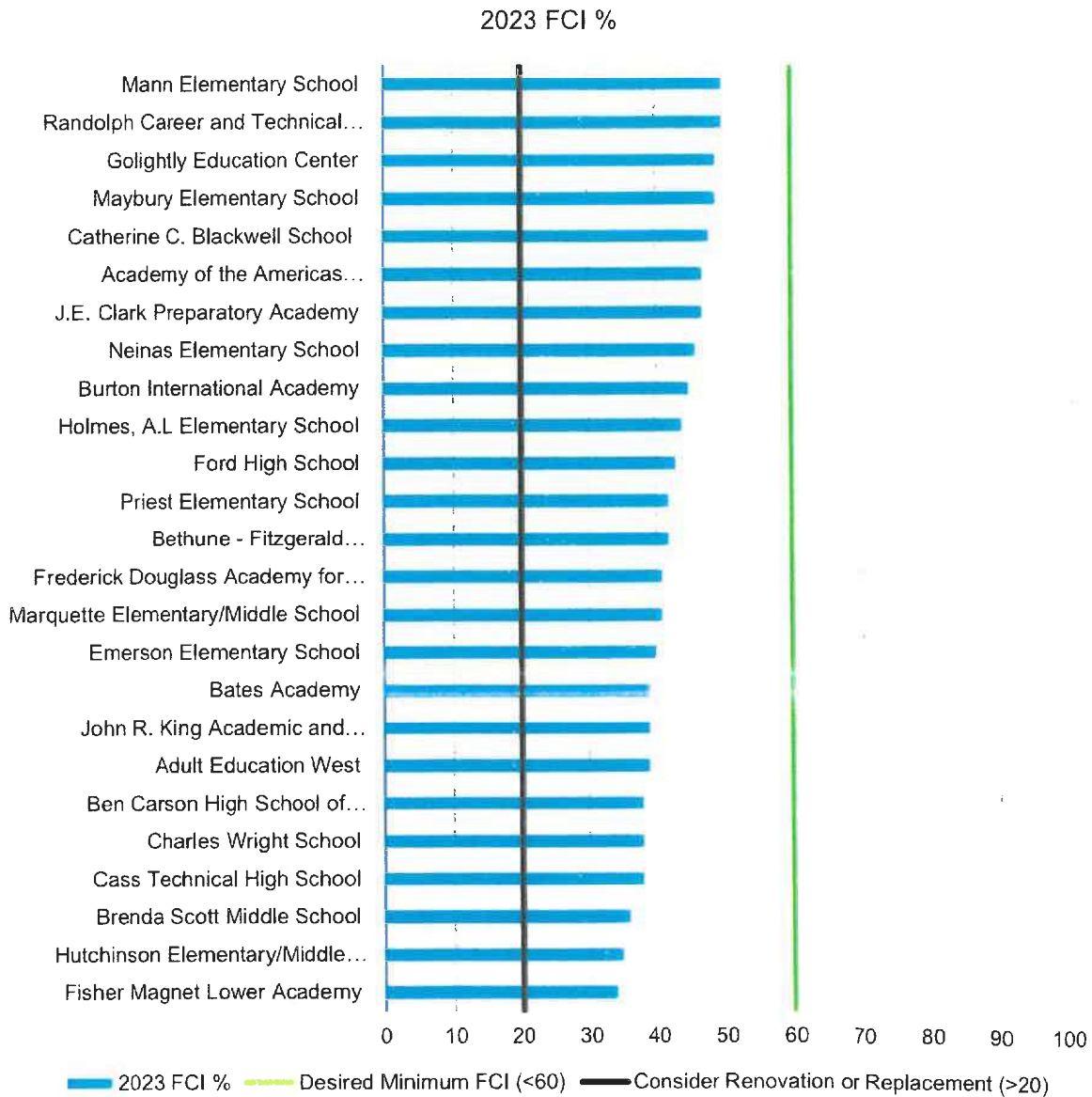
The information shown in the figure below shows the forecast (2023) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the forecast FCI.

Figure 7. Forecast Facility Condition: Detroit Public Schools Community District



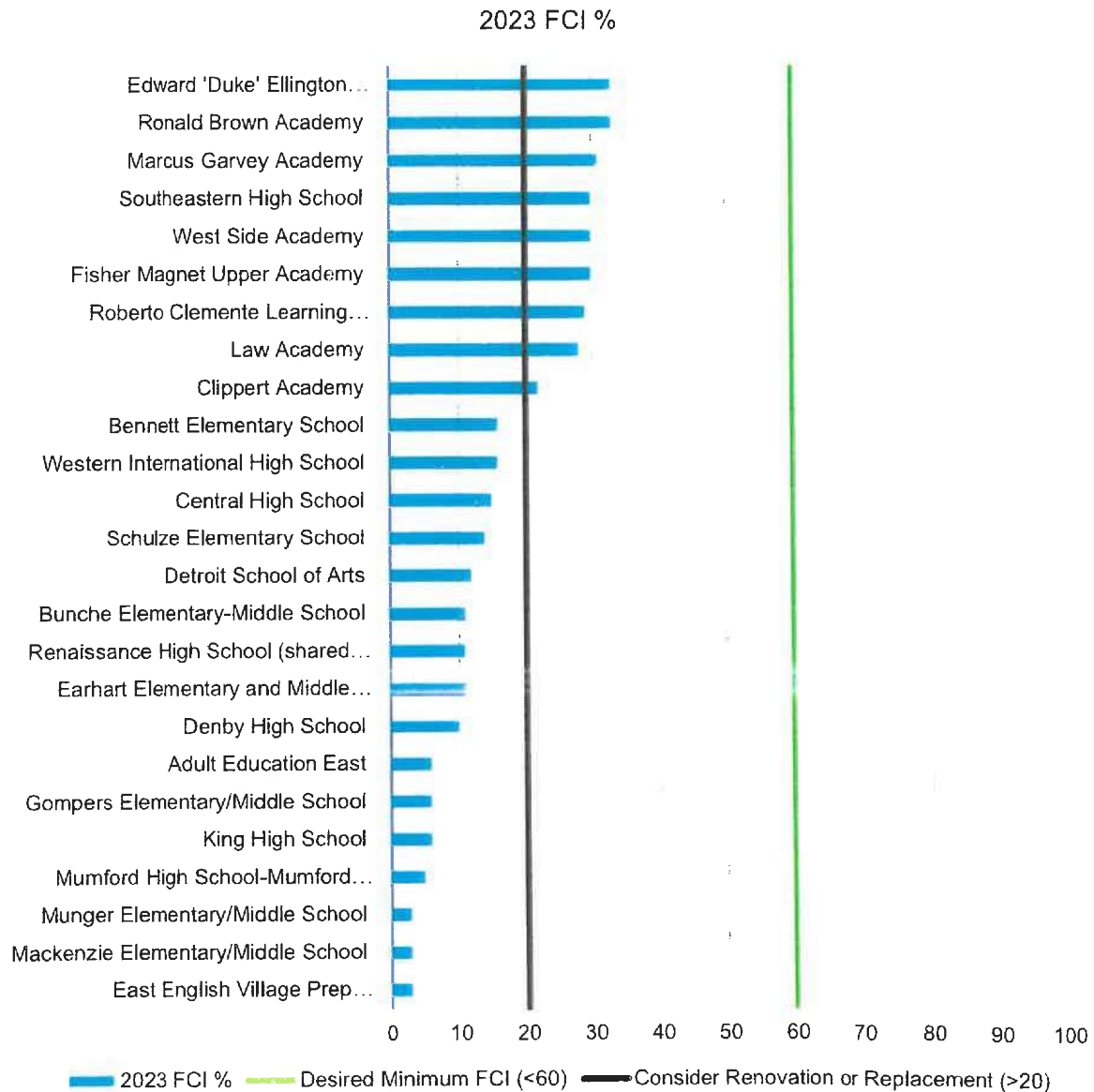
The information shown in the figure below shows the forecast (2023) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the forecast FCI.

Figure 8. Forecast Facility Condition: Detroit Public Schools Community District



The information shown in the figure below shows the forecast (2023) FCI for all School District facilities in order of "worst first". The farthest right point on the blue bar for each building indicates the forecast FCI.

Figure 9. Forecast Facility Condition: Detroit Public Schools Community District



The following table summarizes findings by group. Please note the column labeled "Total Needs 2023" assumes no additional capital renewal funding is provided. A comprehensive list of expired systems and those expected to expire between now and the Year 2028 is shown in the Current and Forecasted Needs: Summarized by System - Detroit Public Schools Community District Table.

Table 1. Facility Description: Summary of Findings: Detroit Public Schools Community District

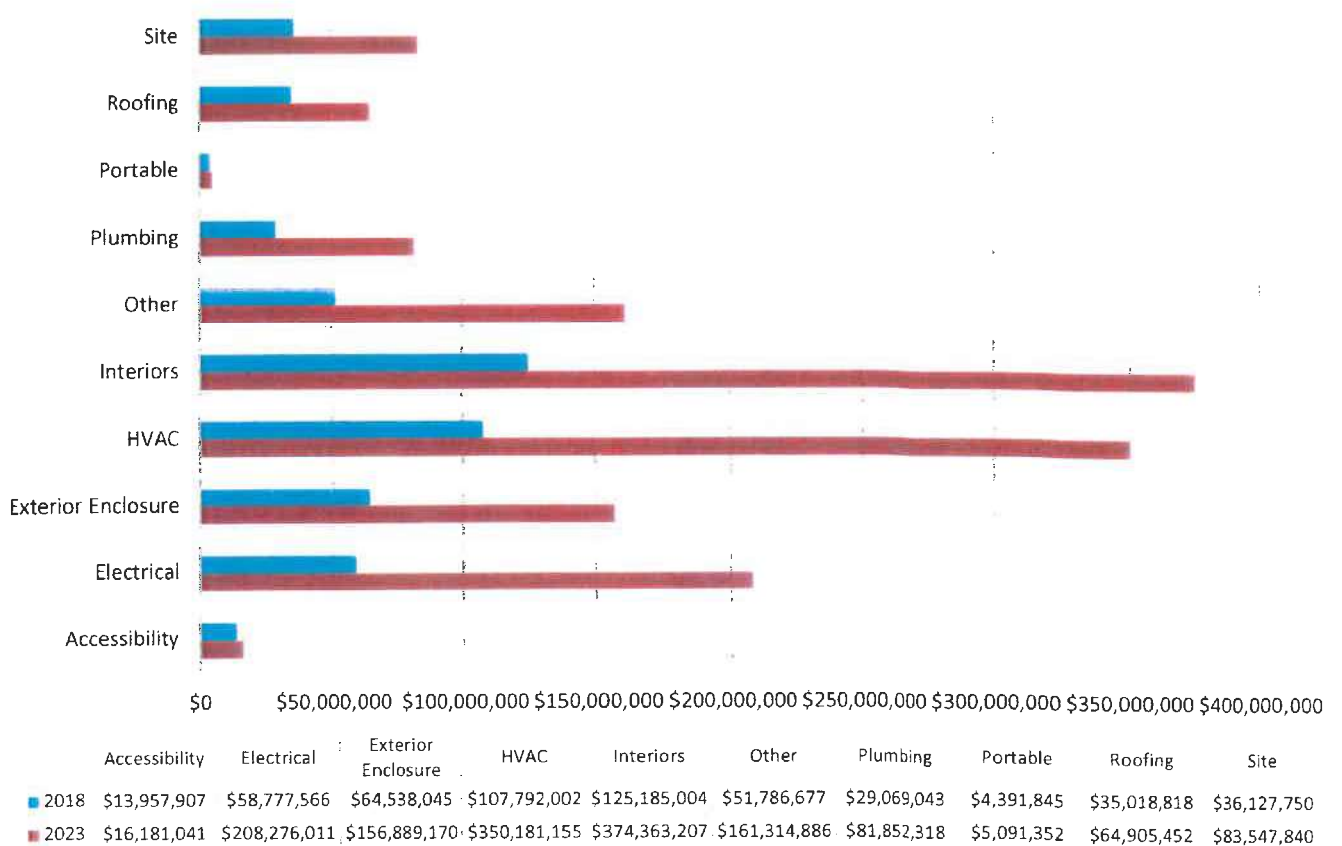
Group	Area (SF)	Total Needs 2018	Current Replacement Value	2018 FCI %	Total Needs 2023	Forecast Replacement Value	2023 FCI %
Elementary School	2,377,329	\$103,447,778	\$461,039,809	22	\$269,570,215	\$534,471,502	50
High School	5,775,496	\$179,545,074	\$1,432,940,809	13	\$598,309,905	\$1,661,171,126	36
Middle School	4,394,119	\$189,174,302	\$1,011,208,357	19	\$529,902,076	\$1,172,267,628	45
SUBTOTAL	12,546,944	\$472,167,154	\$2,905,188,975	16	\$1,397,782,195	\$3,367,910,256	42
Site and Infrastructure (excluded from FCI calculations)		\$36,127,751			\$83,547,840		
Abbreviated Accessibility		\$13,957,907			\$16,181,041		
Portables		\$4,391,845			\$5,091,352		
TOTALS	12,546,944	\$526,644,657	\$2,905,188,975		\$1,502,602,428	\$3,367,910,256	

Note: The average FCI for the Detroit Public Schools Community District facilities assessed is 16 while the average FCI in 5 years is estimated to be 41 assuming current sustainment levels.

The Figure below shows the current and forecasted needs respectively for all facilities. Needs are grouped as follows:

- Site
- Roofing
- Portable
- Plumbing
- Other
- Interiors
- HVAC
- Exterior Enclosure
- Electrical
- Accessibility

Figure 10. Comparison of 2018 Current Needs vs. 2023 Forecasted Needs by System Group: Detroit Public Schools Community District



The following Figures show the current and forecasted needs respectively for all School District facilities grouped by location.

Figure 11. Comparison of 2018 Current Needs vs. 2023 Forecasted Needs by Group: Detroit Public Schools Community District

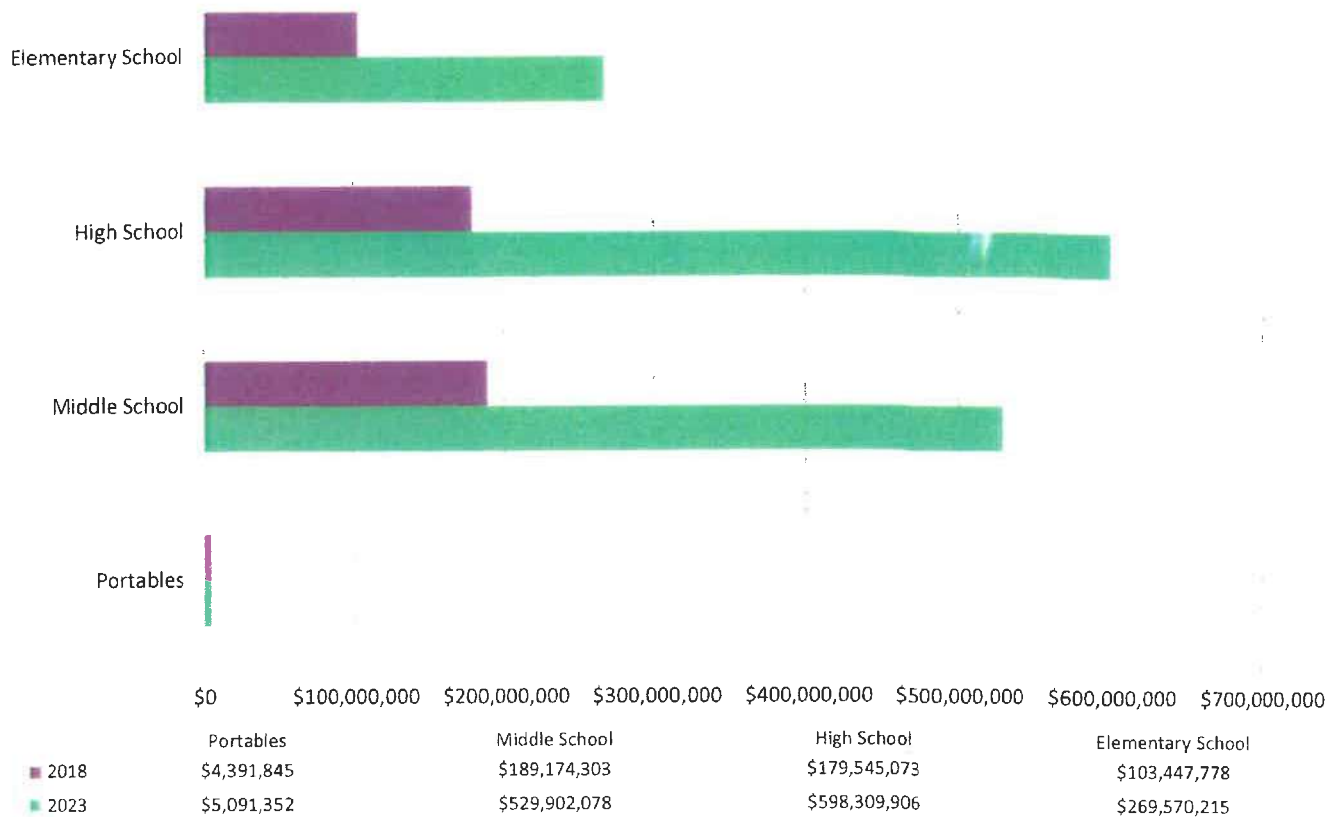


Figure 12. Comparison of 2018 Current Needs vs. 2023 Forecasted Needs by Priority: Detroit Public Schools Community District



Note: Forecasted Needs (2023) include Current Needs (2018)

Figure 13. Current and Forecasted Needs: Summarized by Reporting Period (Current +10 Years): Detroit Public Schools Community District

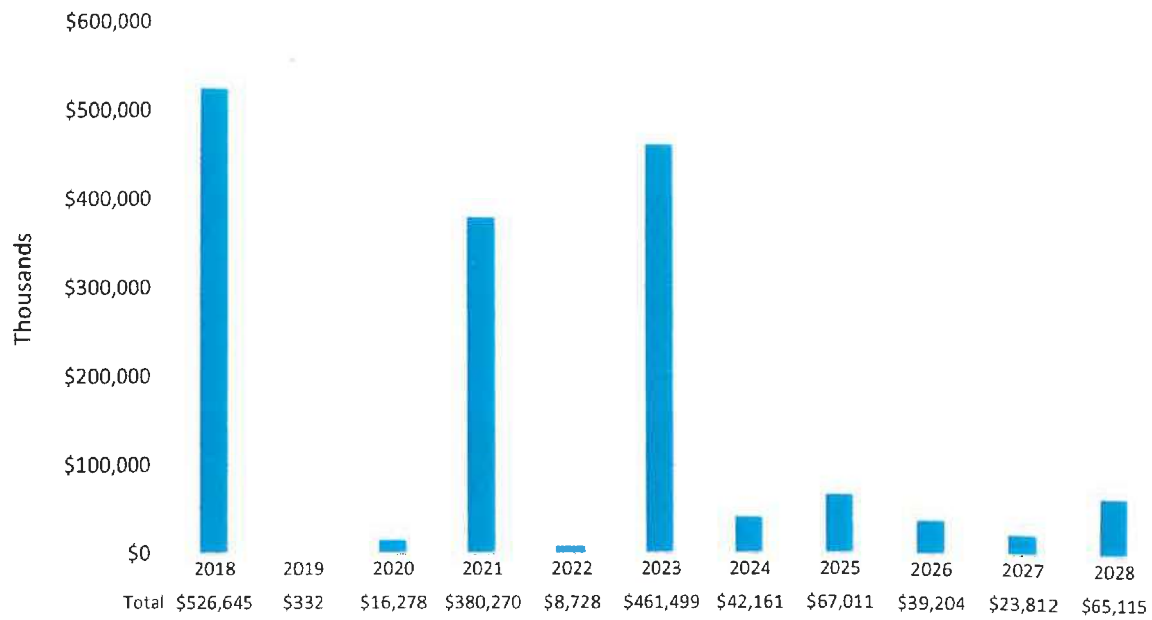


Table 2. Current and Forecasted Needs Summarized by System (Current + 5 years): Detroit Public Schools Community District

System	2018	2019	2020	2021	2022	2023
Cumulative Needs by Year	\$526,644,657	\$542,775,745	\$575,336,591	\$972,866,266	\$1,010,780,378	\$1,502,602,432
Needs by Year	\$526,644,657	\$331,748	\$16,277,573	\$380,269,578	\$8,728,124	\$461,498,642
EXTERIOR ENCLOSURE	\$64,538,045	\$0	\$112,585	\$34,605,423	\$61,562	\$45,172,562
Exterior Walls	\$6,308,239	\$0	\$0	\$4,129,325	\$0	\$19,375,622
Exterior Walls - Finishes	\$1,319,562	\$0	\$38,783	\$1,514,130	\$61,562	\$5,268,455
Exterior Windows	\$55,253,478	\$0	\$0	\$24,993,855	\$0	\$18,088,031
Exterior Doors	\$1,656,766	\$0	\$73,802	\$3,968,113	\$0	\$2,440,454
ROOFING	\$35,018,818	\$0	\$888,024	\$11,942,579	\$345,871	\$10,312,548
Roof Coverings - Built-up	\$17,353,409	\$0	\$468,258	\$6,515,616	\$0	\$2,635,321
Roof Coverings - Composition Shingles	\$3,683,026	\$0	\$0	\$875,379	\$0	\$1,568,941
Roof Coverings - Metal	\$685,204	\$0	\$0	\$0	\$0	\$0
Roof Coverings - Modified Bitumen	\$5,178,306	\$0	\$419,766	\$2,727,279	\$345,871	\$5,495,513
Roof Coverings - Single - Ply	\$7,448,172	\$0	\$0	\$1,366,707	\$0	\$0
Roof Openings	\$670,700	\$0	\$0	\$457,599	\$0	\$612,773
INTERIOR CONSTRUCTION	\$38,562,156	\$122,678	\$1,186,853	\$22,938,188	\$893,051	\$34,181,523
Interior Doors	\$6,665,606	\$97,138	\$0	\$5,785,146	\$0	\$5,694,599
Fittings - Casework	\$9,070,472	\$0	\$0	\$4,225,583	\$39,266	\$5,924,693
Fittings - Lockers	\$21,104,603	\$0	\$1,175,449	\$9,656,397	\$339,076	\$18,450,839
Fittings - Toilet Partitions	\$1,721,475	\$25,540	\$11,405	\$3,271,062	\$514,709	\$4,111,392
INTERIOR FINISHES	\$86,622,848	\$209,070	\$1,927,034	\$75,306,698	\$1,298,984	\$84,796,144
Wall Finishes	\$14,999,680	\$0	\$1,300,183	\$24,178,746	\$0	\$36,291,211
Floor Finishes	\$38,711,685	\$209,070	\$626,851	\$31,069,634	\$126,460	\$37,393,446
Ceiling Finishes	\$32,911,483	\$0	\$0	\$20,058,317	\$1,172,523	\$11,111,488
CONVEYING	\$758,045	\$0	\$0	\$316,891	\$0	\$756,426
Conveying Systems - Chair Lifts	\$33,045	\$0	\$0	\$0	\$0	\$0
Conveying Systems - Elevators	\$725,000	\$0	\$0	\$316,891	\$0	\$756,426
PLUMBING	\$29,069,043	\$0	\$0	\$19,838,589	\$0	\$27,106,570
Plumbing Fixtures	\$14,849,939	\$0	\$0	\$15,150,310	\$0	\$19,788,391
Domestic Water Distribution	\$5,977,448	\$0	\$0	\$1,932,585	\$0	\$3,435,600
Sanitary Waste	\$5,833,050	\$0	\$0	\$1,938,045	\$0	\$2,294,597
Rain Water Drainage	\$2,408,606	\$0	\$0	\$817,650	\$0	\$1,587,983
HVAC	\$107,792,002	\$0	\$0	\$108,724,653	\$3,214,825	\$106,563,429
Energy Supply	\$10,580,765	\$0	\$0	\$3,432,706	\$0	\$22,881,659
Heat Generating System	\$42,838,841	\$0	\$0	\$44,743,840	\$0	\$41,566,596
Cooling Generating Systems	\$11,713,443	\$0	\$0	\$8,293,448	\$1,027,703	\$12,126,754
Distribution Systems	\$32,289,440	\$0	\$0	\$34,120,156	\$0	\$23,496,735
Terminal and Packaged Units	\$10,369,513	\$0	\$0	\$18,134,503	\$2,187,122	\$6,491,686
FIRE PROTECTION	\$33,572,692	\$0	\$145,132	\$6,718,428	\$305,690	\$19,882,160

System	2018	2019	2020	2021	2022	2023
Fire Protection - Activation Devices	\$2,498,842	\$0	\$0	\$2,374,848	\$53,959	\$3,540,890
Fire Protection - Notification Device Ctrl Panel	\$1,779,361	\$0	\$0	\$1,272,451	\$43,300	\$3,177,907
Fire Protection - Sprinklers and Standpipe	\$15,439,554	\$0	\$0	\$1,087,265	\$167,872	\$7,235,755
Fire Protection - Wiring	\$13,854,936	\$0	\$145,132	\$1,983,864	\$40,558	\$5,927,608
ELECTRICAL	\$58,777,566	\$0	\$9,721,887	\$41,129,941	\$2,608,142	\$83,192,193
Electrical Service/Distribution	\$955,839	\$0	\$247,683	\$1,569,638	\$157,150	\$1,938,833
Lighting - Branch Wiring	\$42,895,876	\$0	\$543,518	\$6,318,598	\$0	\$16,300,162
Lighting - Light Fixtures	\$7,387,150	\$0	\$8,047,936	\$27,931,722	\$583,557	\$38,111,128
Communications and Security - Central Clock	\$1,857,873	\$0	\$0	\$715,919	\$58,869	\$1,731,733
Communications and Security - LAN	\$628,215	\$0	\$0	\$70,279	\$119,505	\$10,913,446
Communications and Security - Public Add Intercom	\$1,935,151	\$0	\$332,941	\$2,458,607	\$115,414	\$4,251,617
Communications and Security - Security System	\$1,227,228	\$0	\$302,760	\$1,917,775	\$1,573,648	\$8,826,393
Other Electrical Systems - Emergency Power	\$1,890,235	\$0	\$247,049	\$147,402	\$0	\$1,118,882
EQUIPMENT	\$9,469,050	\$0	\$2,129,293	\$19,840,724	\$0	\$41,374,147
Institutional Equipment - Kitchen Equipment	\$9,469,050	\$0	\$2,129,293	\$19,840,724	\$0	\$41,374,147
FIXED FURNISHINGS	\$805,074	\$0	\$166,765	\$673,203	\$0	\$822,177
Fixed Furnishings - Fixed Seating	\$805,074	\$0	\$166,765	\$673,203	\$0	\$822,177
SPECIAL CONSTRUCTION	\$7,181,816	\$0	\$0	\$3,226,948	\$0	\$2,812,145
Special Construction	\$7,181,816	\$0	\$0	\$3,226,948	\$0	\$2,812,145
SITework	\$36,127,750	\$0	\$0	\$35,007,313	\$0	\$4,526,617
Roadways	\$24,725,538	\$0	\$0	\$23,611,761	\$0	\$3,298,859
Pedestrian Paving	\$2,185,612	\$0	\$0	\$2,694,641	\$0	\$1,227,758
Parking Lots	\$9,216,601	\$0	\$0	\$8,700,911	\$0	\$0
PORTABLE	\$4,391,845	\$0	\$0	\$0	\$0	\$0
Portable	\$4,391,845	\$0	\$0	\$0	\$0	\$0
ACCESSIBILITY	\$13,957,907	\$0	\$0	\$0	\$0	\$0
Parking	\$690,857	\$0	\$0	\$0	\$0	\$0
Ramps	\$173,377	\$0	\$0	\$0	\$0	\$0
Entrances/Exit	\$128,130	\$0	\$0	\$0	\$0	\$0
Paths of Travel	\$12,395	\$0	\$0	\$0	\$0	\$0
Elevators/Lifts	\$11,144,571	\$0	\$0	\$0	\$0	\$0
Toilet Rooms	\$1,008,516	\$0	\$0	\$0	\$0	\$0
Guestrooms	\$5,857	\$0	\$0	\$0	\$0	\$0
Access to Goods and Services	\$42,291	\$0	\$0	\$0	\$0	\$0
Additional Access	\$751,913	\$0	\$0	\$0	\$0	\$0

Table 3. Current and Forecasted Needs Summarized by System (Years 6 - 10): Detroit Public Schools Community District

System	2024	2025	2026	2027	2028
Cumulative Needs by Year	\$1,589,841,712	\$1,704,547,555	\$1,794,888,299	\$1,872,547,342	\$1,993,838,416
Needs by Year	\$42,161,208	\$67,010,592	\$39,204,318	\$23,812,393	\$65,114,655
EXTERIOR ENCLOSURE	\$603,711	\$3,356,822	\$2,521,273	\$1,308,188	\$19,651,291
Exterior Walls	\$0	\$2,384,683	\$0	\$0	\$13,256,160
Exterior Walls - Finishes	\$603,711	\$275,972	\$266,877	\$0	\$53,664
Exterior Windows	\$0	\$535,289	\$1,823,368	\$634,827	\$5,427,737
Exterior Doors	\$0	\$160,878	\$431,027	\$673,361	\$913,731
ROOFING	\$2,467,293	\$4,541,076	\$1,747,799	\$2,784,492	\$3,700,007
Roof Coverings - Built-up	\$0	\$1,473,642	\$736,233	\$2,569,132	\$1,451,935
Roof Coverings - Composition Shingles	\$0	\$219,468	\$0	\$0	\$0
Roof Coverings - Metal	\$0	\$0	\$0	\$0	\$0
Roof Coverings - Modified Bitumen	\$2,467,293	\$2,789,699	\$943,810	\$70,351	\$2,095,665
Roof Coverings - Single - Ply	\$0	\$0	\$0	\$0	\$0
Roof Openings	\$0	\$58,267	\$67,757	\$145,009	\$152,407
INTERIOR CONSTRUCTION	\$6,953,844	\$7,273,136	\$2,669,761	\$1,288,811	\$2,128,434
Interior Doors	\$0	\$401,659	\$1,096,629	\$1,288,811	\$1,205,612
Fittings - Casework	\$0	\$0	\$932,779	\$0	\$262,182
Fittings - Lockers	\$6,028,532	\$5,821,734	\$640,353	\$0	\$184,827
Fittings - Toilet Partitions	\$925,312	\$1,049,743	\$0	\$0	\$475,812
INTERIOR FINISHES	\$10,138,533	\$8,453,473	\$2,901,073	\$72,681	\$1,852,998
Wall Finishes	\$0	\$2,227,074	\$0	\$0	\$338,478
Floor Finishes	\$7,589,504	\$0	\$2,459,757	\$0	\$827,261
Ceiling Finishes	\$2,549,029	\$6,226,399	\$441,315	\$72,681	\$687,259
CONVEYING	\$0	\$0	\$10,465	\$0	\$97,434
Conveying Systems - Chair Lifts	\$0	\$0	\$10,465	\$0	\$0
Conveying Systems - Elevators	\$0	\$0	\$0	\$0	\$97,434
PLUMBING	\$0	\$38,953	\$521,453	\$0	\$1,071,809
Plumbing Fixtures	\$0	\$0	\$521,453	\$0	\$683,117
Domestic Water Distribution	\$0	\$0	\$0	\$0	\$143,118
Sanitary Waste	\$0	\$0	\$0	\$0	\$128,806
Rain Water Drainage	\$0	\$38,953	\$0	\$0	\$116,768
HVAC	\$196,407	\$10,009,298	\$14,586,012	\$1,195,997	\$15,065,003
Energy Supply	\$0	\$1,122,867	\$0	\$0	\$2,744,444
Heat Generating System	\$0	\$1,272,365	\$1,358,018	\$0	\$5,716,078
Cooling Generating Systems	\$0	\$0	\$7,329,491	\$1,191,390	\$2,072,262
Distribution Systems	\$0	\$0	\$0	\$0	\$1,927,412
Terminal and Packaged Units	\$196,407	\$7,614,066	\$5,898,503	\$4,607	\$2,604,808
FIRE PROTECTION	\$4,977,783	\$6,988,385	\$191,674	\$19,783	\$1,314,509
Fire Protection - Activation Devices	\$871,515	\$1,165,566	\$8,978	\$10,975	\$133,587
Fire Protection - Notification Device Ctrl Panel	\$699,364	\$1,179,551	\$138,692	\$8,807	\$218,813
Fire Protection - Sprinklers and Standpipe	\$2,556,278	\$2,587,099	\$24,164	\$0	\$359,530

System	2024	2025	2026	2027	2028
Fire Protection - Wiring	\$850,627	\$2,056,169	\$19,841	\$0	\$602,578
ELECTRICAL	\$16,823,637	\$16,852,980	\$1,133,729	\$2,313,535	\$9,296,917
Electrical Service/Distribution	\$0	\$0	\$184,513	\$0	\$60,440
Lighting - Branch Wiring	\$3,179,759	\$0	\$0	\$0	\$5,091,511
Lighting - Light Fixtures	\$9,425,270	\$10,502,250	\$96,876	\$118,425	\$2,892,273
Communications and Security - Central Clock	\$272,697	\$647,261	\$4,877	\$5,962	\$0
Communications and Security - LAN	\$2,329,398	\$2,638,350	\$414,235	\$1,805,718	\$102,643
Communications and Security - Public Add Intercom	\$968,350	\$1,589,009	\$9,976	\$12,195	\$182,768
Communications and Security - Security System	\$648,163	\$1,003,272	\$0	\$0	\$967,282
Other Electrical Systems - Emergency Power	\$0	\$472,839	\$423,252	\$371,235	\$0
EQUIPMENT	\$0	\$9,139,048	\$12,338,977	\$14,491,833	\$10,936,253
Institutional Equipment - Kitchen Equipment	\$0	\$9,139,048	\$12,338,977	\$14,491,833	\$10,936,253
FIXED FURNISHINGS	\$0	\$357,420	\$582,100	\$337,073	\$0
Fixed Furnishings - Fixed Seating	\$0	\$357,420	\$582,100	\$337,073	\$0
SPECIAL CONSTRUCTION	\$0	\$0	\$0	\$0	\$0
Special Construction	\$0	\$0	\$0	\$0	\$0
SITWORK	\$0	\$0	\$0	\$0	\$0
Roadways	\$0	\$0	\$0	\$0	\$0
Pedestrian Paving	\$0	\$0	\$0	\$0	\$0
Parking Lots	\$0	\$0	\$0	\$0	\$0
PORTABLE	\$0	\$0	\$0	\$0	\$0
Portable	\$0	\$0	\$0	\$0	\$0
ACCESSIBILITY	\$0	\$0	\$0	\$0	\$0
Parking	\$0	\$0	\$0	\$0	\$0
Ramps	\$0	\$0	\$0	\$0	\$0
Entrances/Exit	\$0	\$0	\$0	\$0	\$0
Paths of Travel	\$0	\$0	\$0	\$0	\$0
Elevators/Lifts	\$0	\$0	\$0	\$0	\$0
Toilet Rooms	\$0	\$0	\$0	\$0	\$0
Guestrooms	\$0	\$0	\$0	\$0	\$0
Access to Goods and Services	\$0	\$0	\$0	\$0	\$0
Additional Access	\$0	\$0	\$0	\$0	\$0

The following table provides an overall summary of findings for the portfolio of buildings included in this project.

Table 4. Facility Description: Summary of Findings: Detroit Public Schools Community District

Campus Name	Age (Years)	Area (SF)	Total Building Needs 2018	Current Replacement Value (\$)	2018 FCI %	Total Building Needs 2023	Forecast Replacement Value (\$)	2023 FCI %
Academy of the Americas Elementary/Middle School	100	97,929	\$3,242,379	22,759,414	14	\$12,318,269	26,384,398	47
Adult Education Center-East	90	69,950	\$528,123	15,566,425	3	\$1,110,950	18,045,753	6
Adult Education Center-West	79	48,742	\$946,448	11,163,133	8	\$5,023,113	12,941,130	39
Ann Arbor Trail Magnet Middle School	10-72	44,863	\$1,665,617	8,828,969	19	\$7,758,989	10,235,195	76
Bagley Elementary School of Journalism and Technology	88	65,022	\$4,678,008	11,744,599	40	\$10,811,889	13,615,209	79
Bates Academy	52	128,190	\$4,380,413	29,786,549	15	\$13,600,544	34,530,774	39
Ben Carson High School of Science and Medicine	38	92,464	\$822,698	21,777,268	4	\$9,673,328	25,245,822	38
Bennett Elementary School	107	67,144	\$247,845	12,153,903	2	\$2,564,577	14,089,705	18
Bethune-Fitzgerald Elementary/Middle School	93	179,354	\$1,838,693	41,585,979	4	\$20,018,557	48,209,547	42
Bow Elementary/Middle School	69	59,100	\$3,714,066	11,033,334	34	\$7,591,456	12,790,658	59
Breithaupt Career and Technical Center	37	150,361	\$3,751,507	31,468,678	12	\$26,263,882	36,480,822	72
Brenda Scott Middle School	15	147,620	\$2,562,499	31,933,541	8	\$13,250,679	37,019,727	36
Brewer Academy	18-90	54,287	\$1,759,893	10,725,318	16	\$7,812,947	12,433,583	63
Bunche Elementary/Middle School	96	113,400	\$377,170	26,649,820	1	\$3,465,751	30,894,445	11
Burns Elementary/Middle School	95	65,370	\$4,425,415	12,286,157	36	\$7,315,435	14,243,024	51
Burton International Academy	56	114,200	\$3,307,089	28,822,653	11	\$14,925,713	33,413,354	45
Carleton Elementary School	15-73	56,234	\$4,421,920	11,027,493	40	\$9,808,945	12,783,887	77
Carstens Academy of Aquatic Science at Remus	41	128,000	\$12,872,800	26,765,300	48	\$20,835,610	31,028,318	67
Carver Elementary School	65	67,102	\$3,355,436	13,353,663	25	\$11,206,795	15,480,556	72
Cass Technical High School	14	402,484	\$7,453,501	105,593,743	7	\$46,217,478	122,412,088	38
Catherine C. Blackwell Institute	69	57,044	\$2,562,378	13,136,757	20	\$7,290,974	15,229,101	48
Central High School	94	229,545	\$3,637,544	52,853,226	7	\$8,909,836	61,271,375	15
Charles Wright Academy of Arts and Science	16	94,991	\$11,874	19,298,678	0	\$8,527,877	22,372,458	38

Campus Name	Age (Years)	Area (SF)	Total Building Needs 2018	Current Replacement Value (\$)	2018 FCI %	Total Building Needs 2023	Forecast Replacement Value (\$)	2023 FCI %
Chrysler Elementary School	56	23,066	\$2,286,449	4,482,880	51	\$3,727,801	5,196,887	72
Clippert Academy	113	45,818	\$163,879	8,769,140	2	\$2,286,116	10,165,837	22
Cody High School	71	360,956	\$25,500,188	89,359,479	29	\$66,982,205	103,592,127	65
Coleman A. Young Elementary School	36	67,800	\$1,387,612	13,564,700	10	\$11,004,660	15,725,205	70
Communication and Media Arts High School	60	79,450	\$5,127,802	19,093,821	27	\$11,993,825	22,134,972	54
Cooke Elementary School	93	45,184	\$2,987,961	8,339,837	36	\$5,240,094	9,668,157	54
Davis Aerospace Technical High School at Golightly	36	132,668	\$9,704,498	33,855,215	29	\$27,260,028	39,247,473	69
Davison Elementary/Middle School	91-102	110,388	\$6,346,692	24,895,883	25	\$16,491,263	28,861,152	57
Denby High School	89	214,802	\$1,330,418	52,224,063	3	\$6,296,758	60,542,003	10
Detroit Collegiate Preparatory High School	48	388,059	\$15,350,644	91,300,320	17	\$64,209,739	105,842,094	61
Detroit International Academy for Young Women	104	304,087	\$24,092,987	75,299,315	32	\$55,341,999	87,292,544	63
Detroit Lions Alternative Education	55	32,241	\$1,429,405	6,555,804	22	\$4,057,415	7,599,974	53
Detroit School of Arts	14	305,634	\$0	77,077,607	0	\$10,678,125	89,354,071	12
Dixon Educational Learning Academy	55	93,258	\$9,395,277	19,595,837	48	\$16,128,626	22,716,946	71
Dossin Elementary School	18-69	52,260	\$1,831,609	9,918,509	18	\$6,007,937	11,498,270	52
Drew Transition Center	48	139,000	\$12,207,944	32,977,324	37	\$22,633,909	38,229,756	59
Earhart Elementary/Middle School	7	104,450	\$0	26,990,732	0	\$3,431,280	31,289,655	11
Early Intervention Center	48	61,152	\$6,341,121	12,416,648	51	\$10,396,614	14,394,299	72
East English Village Preparatory Academy	6	238,440	\$0	60,984,979	0	\$1,924,556	70,698,304	3
Edison Elementary School	97	44,263	\$1,214,466	8,154,904	15	\$6,311,877	9,453,769	67
Edward 'Duke' Ellington Conservatory of Music and Art	17	86,000	\$40,883	21,867,138	0	\$8,389,708	25,350,006	33
Emerson Elementary/Middle School	13-71	126,805	\$3,381,606	24,377,701	14	\$11,400,860	28,260,437	40
Moses Field Center	54	53,742	\$3,268,588	10,909,626	30	\$8,085,048	12,647,247	64
Fisher Magnet Lower Academy	16	95,098	\$1,476,396	19,320,335	8	\$7,680,331	22,397,564	34
Fisher Magnet Upper Academy	15	147,620	\$368,865	34,515,937	1	\$11,932,823	40,013,430	30
Fleming Early Learning Neighborhood Center	68	62,548	\$4,966,233	12,329,775	40	\$8,540,713	14,293,588	60

Campus Name	Age (Years)	Area (SF)	Total Building Needs 2018	Current Replacement Value (\$)	2018 FCI %	Total Building Needs 2023	Forecast Replacement Value (\$)	2023 FCI %
Ford High School	62	270,218	\$2,787,583	70,569,742	4	\$34,954,298	81,809,672	43
Foreign Language Immersion and Cultural Studies School	68	131,103	\$5,032,716	33,915,101	15	\$26,187,922	39,316,897	67
Frederick Douglass Academy for Young Men	15-53	236,067	\$13,133,746	59,016,318	22	\$28,260,468	68,416,087	41
Gardner Elementary School	15-93	35,634	\$1,465,430	6,459,084	23	\$3,309,049	7,487,849	44
Golightly Education Center	16-99	107,134	\$5,435,324	19,893,075	27	\$11,305,945	23,061,526	49
Gompers Elementary/Middle School	7	87,748	\$0	23,075,125	0	\$1,674,631	26,750,394	6
Greenfield Union Elementary School	16-104	75,285	\$4,888,395	14,385,749	34	\$9,349,051	16,677,026	56
Harms Elementary School	15-103	55,497	\$2,836,693	10,037,120	28	\$5,730,162	11,635,773	49
Henderson Academy	55	109,000	\$2,618,725	25,864,338	10	\$17,441,276	29,983,856	58
A.L. Holmes Academy of Blended Learning	103	102,217	\$7,520,999	24,460,528	31	\$12,514,671	28,356,456	44
Hutchinson Elementary/Middle School at Howe	16	98,174	\$515,659	24,166,854	2	\$9,896,114	28,016,007	35
J.E. Clark Preparatory Academy	93	61,202	\$1,443,679	14,647,169	10	\$7,925,990	16,980,083	47
John R. King Academic and Performing Arts Academy	95	187,551	\$6,867,654	41,560,988	17	\$18,820,249	48,180,575	39
Keidan Special Education Center	11-55	77,550	\$7,916,713	14,994,340	53	\$12,733,445	17,382,549	73
King High School	7	306,444	\$0	84,804,866	0	\$5,848,346	98,312,083	6
Law Academy	17	125,995	\$1,560,763	30,943,236	5	\$10,059,523	35,871,692	28
Ludington Magnet Middle and Honors School	55	95,591	\$2,437,212	19,076,379	13	\$14,652,391	22,114,752	66
Mackenzie Elementary/Middle School	6	111,774	\$64,270	28,559,501	0	\$976,684	33,108,289	3
Mann Elementary School	74	44,909	\$3,282,006	10,260,584	32	\$5,919,757	11,894,829	50
Marcus Garvey Academy	6-56	135,600	\$6,161,709	32,273,900	19	\$11,754,046	37,414,295	31
Mark Twain School for Scholars	93	120,132	\$6,563,000	21,010,380	31	\$16,386,546	24,356,788	67
Marquette Elementary/Middle School	16-69	92,618	\$3,424,514	18,921,889	18	\$8,988,559	21,935,655	41
Mason Academy	54	96,304	\$5,845,292	21,785,197	27	\$16,506,378	25,255,014	65
Maybury Elementary School	15-109	56,597	\$1,890,044	10,331,870	18	\$5,631,123	11,977,469	47
Mumford High School/Mumford Academy	6	240,273	\$0	59,350,104	0	\$3,544,450	68,803,036	5

Campus Name	Age (Years)	Area (SF)	Total Building Needs 2018	Current Replacement Value (\$)	2018 FCI %	Total Building Needs 2023	Forecast Replacement Value (\$)	2023 FCI %
Munger Elementary/Middle School	6	115,691	\$66,522	29,507,183	0	\$1,010,911	34,206,912	3
Neinas Elementary School	102	60,365	\$977,385	11,914,542	8	\$5,536,172	13,812,220	40
Nichols Elementary/Middle School	108	51,904	\$5,605,762	10,077,810	56	\$7,487,825	11,682,944	64
Noble Elementary School	98	143,605	\$14,279,004	34,953,457	41	\$27,706,235	40,520,637	68
Nolan Elementary School	92	112,432	\$5,749,070	27,402,489	21	\$20,308,035	31,766,995	64
Osborn High School	62	201,884	\$13,993,463	50,327,736	28	\$39,327,249	58,343,640	67
Palmer Park Preparatory Academy	89	165,500	\$25,455,650	38,718,753	66	\$33,403,897	44,885,646	74
Pasteur Elementary School	88	56,541	\$4,231,528	11,254,486	38	\$8,035,511	13,047,034	62
Paul Robeson Malcolm X Academy	88	54,427	\$1,714,178	12,984,241	13	\$9,709,814	15,052,294	65
Pershing High School	89	249,694	\$28,041,977	62,027,827	45	\$43,027,450	71,907,252	60
Priest Elementary/Middle School	15-95	117,502	\$4,613,758	28,424,400	16	\$13,839,521	32,951,670	42
Pulaski Elementary/Middle School	76	60,966	\$5,116,953	11,598,019	44	\$9,444,121	13,445,283	70
Randolph Career and Technical Center	36	122,883	\$2,036,170	27,552,211	7	\$15,855,427	31,940,564	50
Renaissance High School	13	295,523	\$0	75,897,194	0	\$9,793,853	87,985,649	11
Roberto Clemente Learning Academy	17	94,088	\$1,444,604	20,016,804	7	\$7,573,402	23,204,962	33
Ronald Brown Academy	17-91	121,992	\$3,396,752	30,799,275	11	\$11,629,089	35,704,801	33
Sampson Webber Academy	54	145,118	\$9,600,826	35,171,162	27	\$26,980,974	40,773,016	66
Schulze Elementary School	16	94,991	\$860,737	19,271,368	4	\$3,017,167	22,340,798	14
Southeastern High School	104	378,761	\$8,363,595	99,015,038	8	\$34,743,609	114,785,566	30
Spain Elementary/Middle School	51-106	141,738	\$7,440,324	36,232,031	21	\$24,601,315	42,002,854	59
Thirkell Elementary School	104	68,701	\$5,890,252	13,911,094	42	\$10,960,708	16,126,770	68
Thurgood Marshall Elementary/Middle School	98	90,905	\$11,133,931	21,103,600	53	\$16,355,831	24,464,857	67
Vernor Elementary School	73	44,608	\$1,897,792	8,886,471	21	\$5,746,596	10,301,856	56
Wayne Elementary School	18-89	47,066	\$2,537,595	8,934,686	28	\$7,032,531	10,357,692	68
West Side Academy	55	74,557	\$464,023	17,420,796	3	\$6,001,666	20,195,477	30
Western International High School	82	312,500	\$798,338	71,930,806	1	\$13,544,308	83,387,519	16
TOTALS		12,432,744	\$472,167,154	2,909,983,614		\$1,397,782,199	3,373,468,560	

The following table illustrates the current estimated needs by campus.

Table 5. Summary of Current Deficiencies: Detroit Public Schools Community District

Name	Year Built	Age (Years)	Building System	Site	Abbreviated Accessibility	Portables	Current Estimated Needs
Academy of the Americas Elementary/Middle School	1918	100	\$3,242,379	\$233,555	\$306,118	\$0	\$3,782,052
Adult Education Center-East	1928	90	\$528,123	\$110,139	\$9,578	\$0	\$647,839
Adult Education Center-West	1939	79	\$946,448	\$0	\$7,082	\$0	\$953,530
Ann Arbor Trail Magnet Middle School	1946	72	\$1,665,617	\$0	\$294,239	\$0	\$1,959,856
Bagley Elementary School of Journalism and Technology	1930	88	\$4,678,008	\$355,064	\$268,529	\$0	\$5,301,601
Bates Academy	1966	52	\$4,380,413	\$221,829	\$50,771	\$0	\$4,653,012
Ben Carson High School of Science and Medicine	1980	38	\$822,698	\$880,652	\$8,891	\$0	\$1,712,241
Bennett Elementary School	1911	107	\$247,845	\$21,718	\$247,423	\$0	\$516,986
Bethune-Fitzgerald Elementary/Middle School	1925	93	\$1,838,693	\$108,588	\$34,207	\$0	\$1,981,487
Bow Elementary/Middle School	1949	69	\$3,714,066	\$375,884	\$312,172	\$0	\$4,402,122
Breithaupt Career and Technical Center	1981	37	\$3,751,507	\$391,156	\$26,626	\$0	\$4,169,288
Brenda Scott Middle School	2003	15	\$2,562,499	\$2,321,813	\$1,705	\$0	\$4,886,016
Brewer Academy	1928	90	\$1,759,893	\$0	\$257,714	\$546,695	\$2,564,302
Bunche Elementary/Middle School	1922	96	\$377,170	\$655,433	\$18,000	\$0	\$1,050,602
Burns Elementary/Middle School	1923	95	\$4,425,415	\$93,075	\$340,763	\$0	\$4,859,253
Burton International Academy	1962	56	\$3,307,089	\$0	\$250,131	\$0	\$3,557,220
Carleton Elementary School	1945	73	\$4,421,920	\$0	\$272,548	\$0	\$4,694,469
Carstens Academy of Aquatic Science at Remus	1977	41	\$12,872,800	\$0	\$274,024	\$0	\$13,146,824
Carver Elementary School	1953	65	\$3,355,436	\$100,213	\$26,572	\$0	\$3,482,221
Cass Technical High School	2004	14	\$7,453,501	\$0	\$5,489	\$0	\$7,458,990
Catherine C. Blackwell Institute	1949	69	\$2,562,378	\$77,563	\$289,901	\$0	\$2,929,842
Central High School	1924	94	\$3,637,544	\$2,332,649	\$119,657	\$0	\$6,089,850
Charles Wright Academy of Arts and Science	2002	16	\$11,874	\$0	\$4,307	\$0	\$16,181
Chrysler Elementary School	1962	56	\$2,286,449	\$33,731	\$15,351	\$0	\$2,335,531
Clippert Academy	1905	113	\$163,879	\$58,787	\$253,889	\$0	\$476,556
Cody High School	1947	71	\$25,500,188	\$1,195,848	\$13,553	\$0	\$26,709,589
Coleman A. Young Elementary School	1982	36	\$1,387,612	\$0	\$15,124	\$0	\$1,402,736
Communication and Media Arts High School	1958	60	\$5,127,802	\$0	\$289,745	\$0	\$5,417,547
Cooke Elementary School	1925	93	\$2,987,961	\$209,238	\$252,552	\$0	\$3,449,751
Davis Aerospace Technical High School at Golightly	1982	36	\$9,704,498	\$1,570,000	\$20,719	\$0	\$11,295,217
Davison Elementary/Middle School	1916	102	\$6,346,692	\$64,232	\$335,712	\$0	\$6,746,636
Denby High School	1929	89	\$1,330,418	\$434,350	\$9,681	\$0	\$1,774,449
Detroit Collegiate Preparatory High School	1970	48	\$15,350,644	\$337,103	\$39,268	\$0	\$15,727,014

Name	Year Built	Age (Years)	Building System	Site	Abbreviated Accessibility	Portables	Current Estimated Needs
Detroit International Academy for Young Women	1914	104	\$24,092,987	\$1,195,883	\$56,169	\$0	\$25,345,039
Detroit Lions Alternative Education	1963	55	\$1,429,405	\$0	\$36,187	\$0	\$1,465,592
Detroit School of Arts	2004	14	\$0	\$0	\$5,580	\$0	\$5,580
Dixon Educational Learning Academy	1963	55	\$9,395,277	\$683,957	\$38,565	\$0	\$10,117,799
Dossin Elementary School	1949	69	\$1,831,609	\$0	\$272,498	\$464,280	\$2,568,388
Drew Transition Center	1970	48	\$12,207,944	\$83,577	\$14,451	\$0	\$12,305,972
Earhart Elementary/Middle School	2011	7	\$0	\$0	\$4,223	\$0	\$4,223
Early Intervention Center	1970	48	\$6,341,121	\$1,136,501	\$9,236	\$0	\$7,486,858
East English Village Preparatory Academy	2012	6	\$0	\$0	\$7,934	\$0	\$7,934
Edison Elementary School	1921	97	\$1,214,466	\$72,909	\$287,487	\$0	\$1,574,861
Edward 'Duke' Ellington Conservatory of Music and Art	2001	17	\$40,883	\$0	\$9,426	\$0	\$50,308
Emerson Elementary/Middle School	1947	71	\$3,381,606	\$0	\$282,932	\$0	\$3,664,538
Moses Field Center	1964	54	\$3,268,588	\$234,158	\$25,919	\$0	\$3,528,666
Fisher Magnet Lower Academy	2002	16	\$1,476,396	\$1,372,070	\$13,894	\$0	\$2,862,361
Fisher Magnet Upper Academy	2003	15	\$368,865	\$1,484,583	\$12,733	\$0	\$1,866,181
Fleming Early Learning Neighborhood Center	1950	68	\$4,966,233	\$918,635	\$18,799	\$0	\$5,903,668
Ford High School	1956	62	\$2,787,583	\$0	\$13,106	\$0	\$2,800,689
Foreign Language Immersion and Cultural Studies School	1950	68	\$5,032,716	\$193,906	\$7,961	\$0	\$5,234,583
Frederick Douglass Academy for Young Men	1965	53	\$13,133,746	\$720,992	\$290,581	\$0	\$14,145,319
Gardner Elementary School	1925	93	\$1,465,430	\$167,801	\$328,102	\$795,000	\$2,756,333
Golightly Education Center	1919	99	\$5,435,324	\$94,626	\$249,320	\$0	\$5,779,270
Gompers Elementary/Middle School	2011	7	\$0	\$0	\$11,174	\$0	\$11,174
Greenfield Union Elementary School	1914	104	\$4,888,395	\$117,866	\$327,005	\$0	\$5,333,266
Harms Elementary School	1915	103	\$2,836,693	\$173,054	\$261,995	\$912,660	\$4,184,402
Henderson Academy	1963	55	\$2,618,725	\$243,401	\$40,300	\$0	\$2,902,427
A.L. Holmes Academy of Blended Learning	1915	103	\$7,520,999	\$159,886	\$295,161	\$0	\$7,976,046
Hutchinson Elementary/Middle School at Howe	2002	16	\$515,659	\$0	\$76,498	\$0	\$592,157
J.E. Clark Preparatory Academy	1925	93	\$1,443,679	\$273,813	\$266,598	\$0	\$1,984,089
John R. King Academic and Performing Arts Academy	1923	95	\$6,867,654	\$0	\$35,077	\$0	\$6,902,731
Keidan Special Education Center	1963	55	\$7,916,713	\$173,740	\$252,896	\$0	\$8,343,349
King High School	2011	7	\$0	\$0	\$3,879	\$0	\$3,879
Law Academy	2001	17	\$1,560,763	\$0	\$33,065	\$0	\$1,593,828
Ludington Magnet Middle and Honors School	1963	55	\$2,437,212	\$803,688	\$73,617	\$0	\$3,314,517
Mackenzie Elementary/Middle School	2012	6	\$64,270	\$0	\$8,278	\$0	\$72,548
Mann Elementary School	1944	74	\$3,282,006	\$373,724	\$290,204	\$0	\$3,945,934

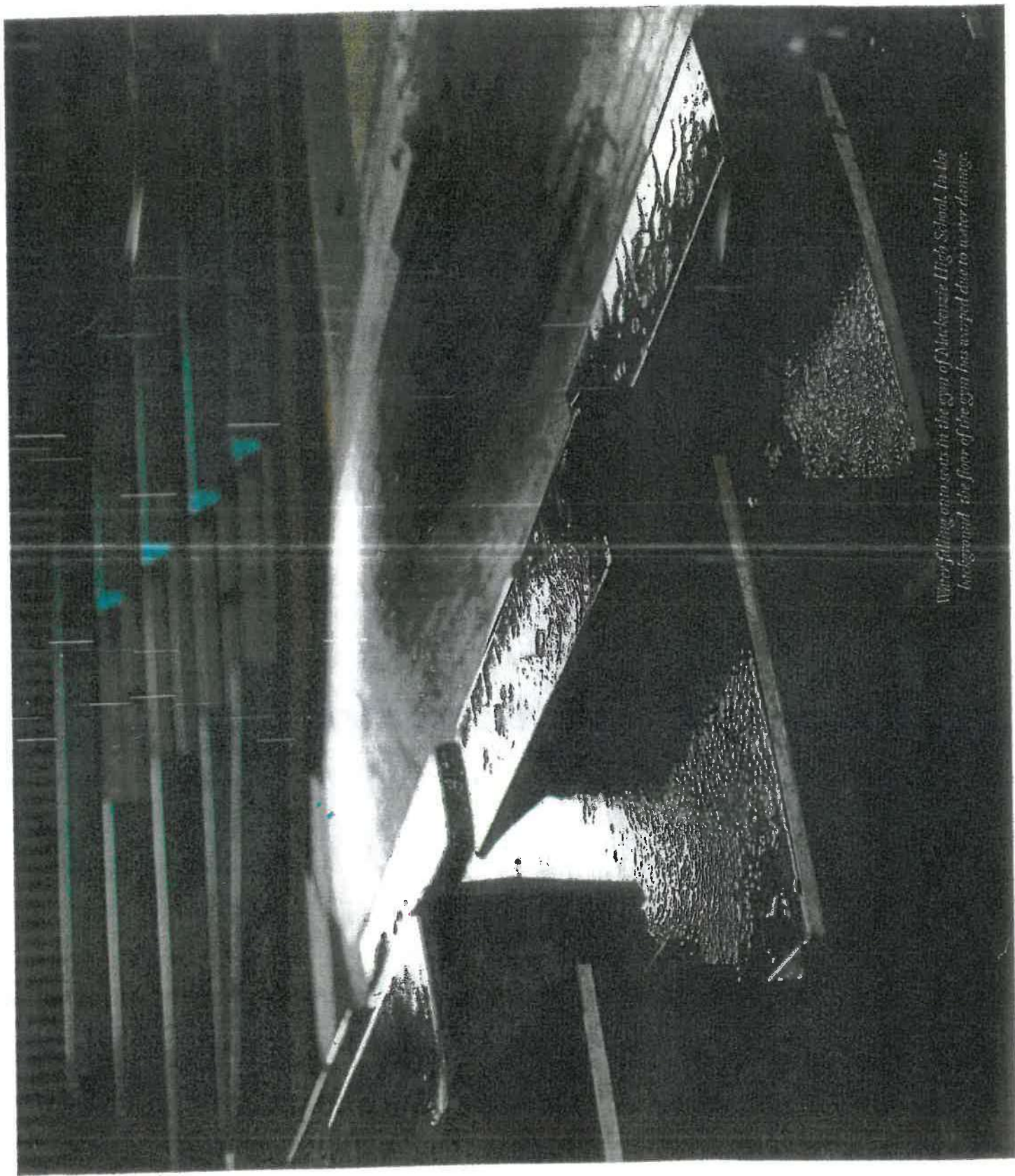
Name	Year Built	Age (Years)	Building System	Site	Abbreviated Accessibility	Portables	Current Estimated Needs
Marcus Garvey Academy	1962	56	\$6,161,709	\$139,613	\$268,406	\$0	\$6,569,728
Mark Twain School for Scholars	1925	93	\$6,563,000	\$603,325	\$12,696	\$0	\$7,179,021
Marquette Elementary/Middle School	1949	69	\$3,424,514	\$0	\$286,203	\$0	\$3,710,717
Mason Academy	1964	54	\$5,845,292	\$1,955,575	\$14,250	\$0	\$7,815,117
Maybury Elementary School	1909	109	\$1,890,044	\$52,743	\$289,793	\$1,204,160	\$3,436,739
Mumford High School/Mumford Academy	2012	6	\$0	\$0	\$0	\$0	\$0
Munger Elementary/Middle School	2012	6	\$66,522	\$0	\$6,955	\$0	\$73,477
Neinas Elementary School	1916	102	\$977,385	\$40,838	\$262,605	\$0	\$1,280,827
Nichols Elementary/Middle School	1910	108	\$5,605,762	\$268,866	\$278,101	\$0	\$6,152,729
Noble Elementary School	1920	98	\$14,279,004	\$111,690	\$121,799	\$0	\$14,512,493
Nolan Elementary School	1926	92	\$5,749,070	\$224,750	\$20,409	\$0	\$5,994,229
Osborn High School	1956	62	\$13,993,463	\$288,533	\$25,835	\$0	\$14,307,831
Palmer Park Preparatory Academy	1929	89	\$25,455,650	\$149,731	\$265,976	\$0	\$25,871,357
Pasteur Elementary School	1930	88	\$4,231,528	\$67,538	\$247,442	\$0	\$4,546,509
Paul Robeson Malcolm X Academy	1930	88	\$1,714,178	\$90,334	\$253,783	\$0	\$2,058,295
Pershing High School	1929	89	\$28,041,977	\$2,136,709	\$54,394	\$0	\$30,233,080
Priest Elementary/Middle School	1923	95	\$4,613,758	\$235,500	\$306,725	\$0	\$5,155,983
Pulaski Elementary/Middle School	1942	76	\$5,116,953	\$465,375	\$269,696	\$0	\$5,852,023
Randolph Career and Technical Center	1982	36	\$2,036,170	\$1,289,553	\$78,637	\$0	\$3,404,360
Renaissance High School	2005	13	\$0	\$0	\$17,586	\$0	\$17,586
Roberto Clemente Learning Academy	2001	17	\$1,444,604	\$673,138	\$6,062	\$0	\$2,123,804
Ronald Brown Academy	1927	91	\$3,396,752	\$1,050,566	\$250,111	\$0	\$4,697,429
Sampson Webber Academy	1964	54	\$9,600,826	\$291,547	\$284,109	\$0	\$10,176,482
Schulze Elementary School	2002	16	\$860,737	\$1,340,381	\$8,416	\$0	\$2,209,535
Southeastern High School	1914	104	\$8,363,595	\$617,250	\$11,172	\$0	\$8,992,016
Spain Elementary/Middle School	1912	106	\$7,440,324	\$0	\$550,647	\$0	\$7,990,971
Thirkell Elementary School	1914	104	\$5,890,252	\$108,588	\$278,333	\$0	\$6,277,173
Thurgood Marshall Elementary/Middle School	1920	98	\$11,133,931	\$100,831	\$261,299	\$0	\$11,496,061
Vernor Elementary School	1945	73	\$1,897,792	\$340,913	\$293,311	\$0	\$2,532,015
Wayne Elementary School	1929	89	\$2,537,595	\$454,550	\$293,285	\$469,050	\$3,754,481
West Side Academy	1963	55	\$464,023	\$69,806	\$1,705	\$0	\$535,534
Western International High School	1936	82	\$798,338	\$490,625	\$5,277	\$0	\$1,294,239
						Total Estimated Needs	\$526,644,657

Note: Please note that requirements are based on visual observations and interviews with School District personnel.

EXHIBIT 6



Frozen water pipes at Longfellow School



Water filling gym seats in the gym of Mackenzie High School. In the background, the floor of the gym has warped due to water damage.



The closure of Oakwood Elementary School in 2013 was fought by parents of students that love the school and they received a large

EXHIBIT 7

Detroit Public Schools Historical Budget Trends

Bethany Wicksall, Associate Director
House Fiscal Agency

House Appropriations Committee
February 24, 2016

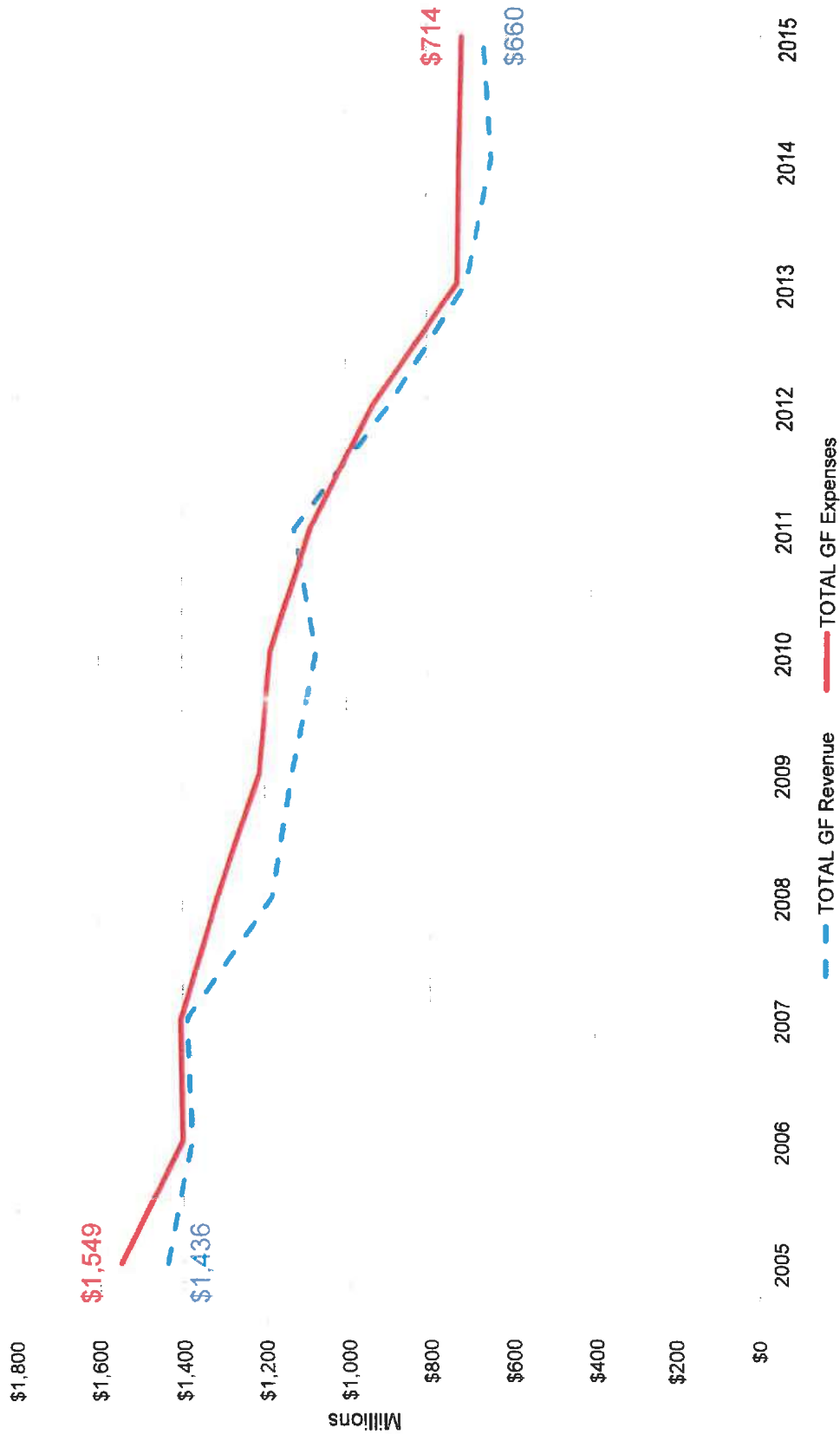


DPS Governance Timeline

- 1999 – PA 10 of 1999 replaced the DPS 11-member school board with a 7-member appointed board, referred to as the reform board. 6 members were appointed by the mayor of Detroit and 1 member was appointed by the State Superintendent.
- 2004 – Voters were allowed to vote whether or not to keep the reform board or return to an elected board. They chose an elected board.
- 2006 – Newly elected board members take office.
- 2009 – Governor appoints the district's first Emergency Financial Manager (EFM), Robert Bobb, under PA 72 of 1990.
- 2011 – PA 4 of 2011 gives EFM expanded powers, and Governor appoints Roy Roberts as the new EFM.
- 2012 – PA 4 of 2011 is repealed in statewide referendum, and is subsequently replaced by PA 436 of 2012, which instead provides for Emergency Managers (EM).
- 2015 – Governor appoints Darnell Earley as EM.

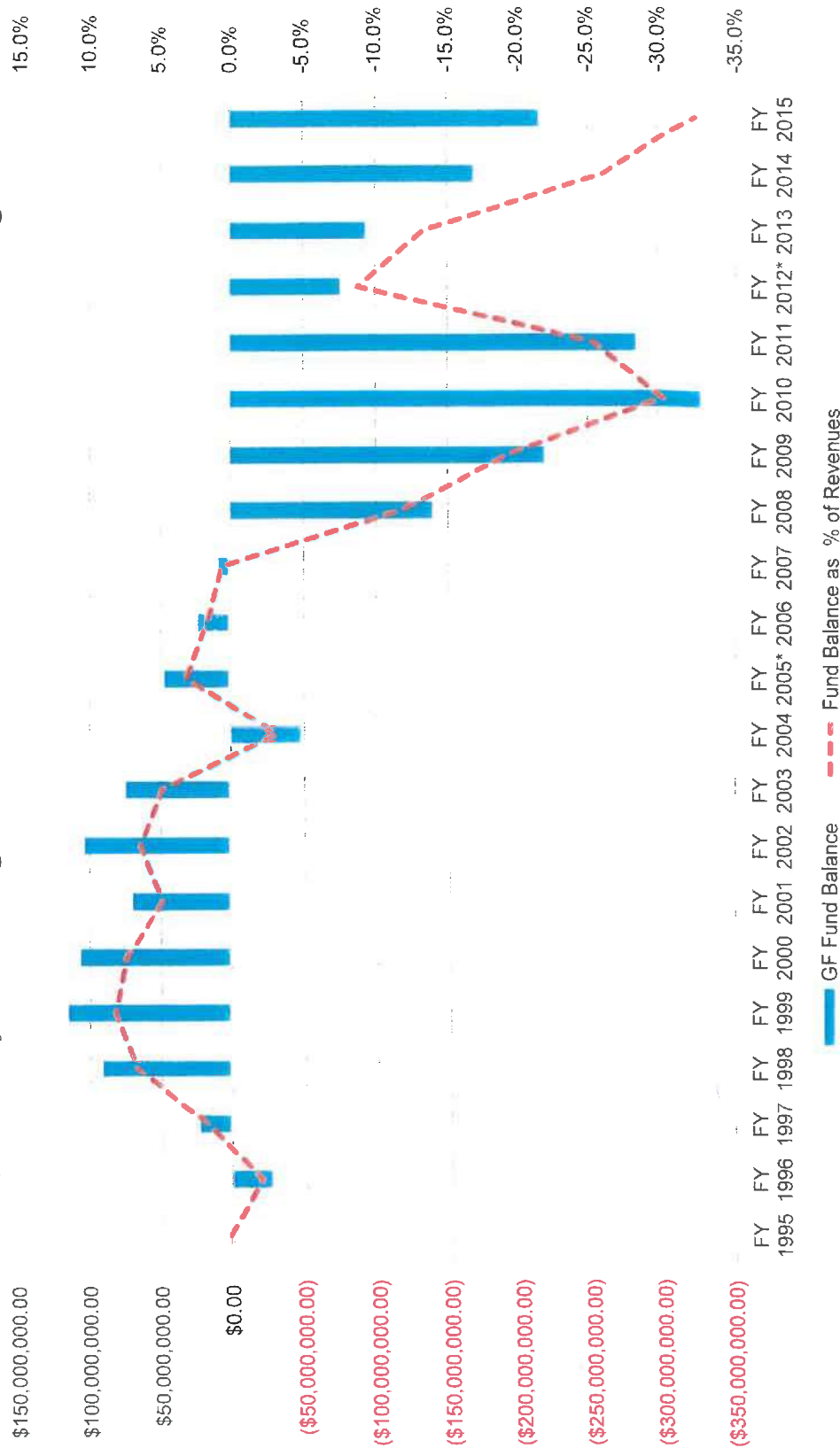
DPS General Fund (GF) Revenues vs. Expenditures

While revenues declined 54.0% over 10 years, expenditures were reduced by 53.9%. The annual difference equals the operating deficit.



DPS Fund Balance: Total and Percent of Revenues

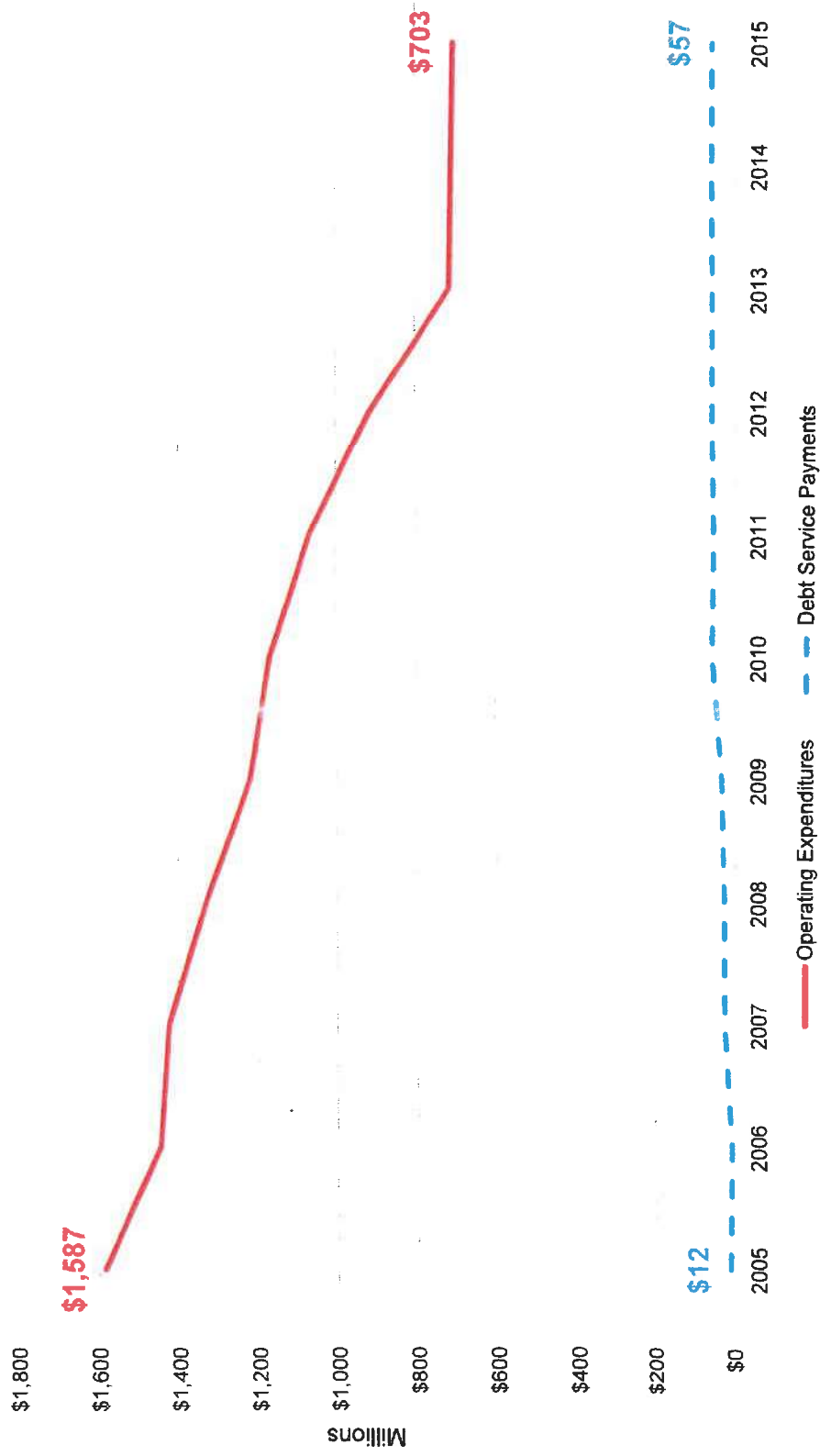
The DPS fund balance at the end of FY 2014-15 was negative \$215.9 million, and expected to get worse under their FY 2015-16 budget.



*While GF fund balances improved in FY 2005 and 2012, this was the result of operating debt being refinanced into long term debt (\$210 million in FY 2005 and \$231 million in FY 2012).

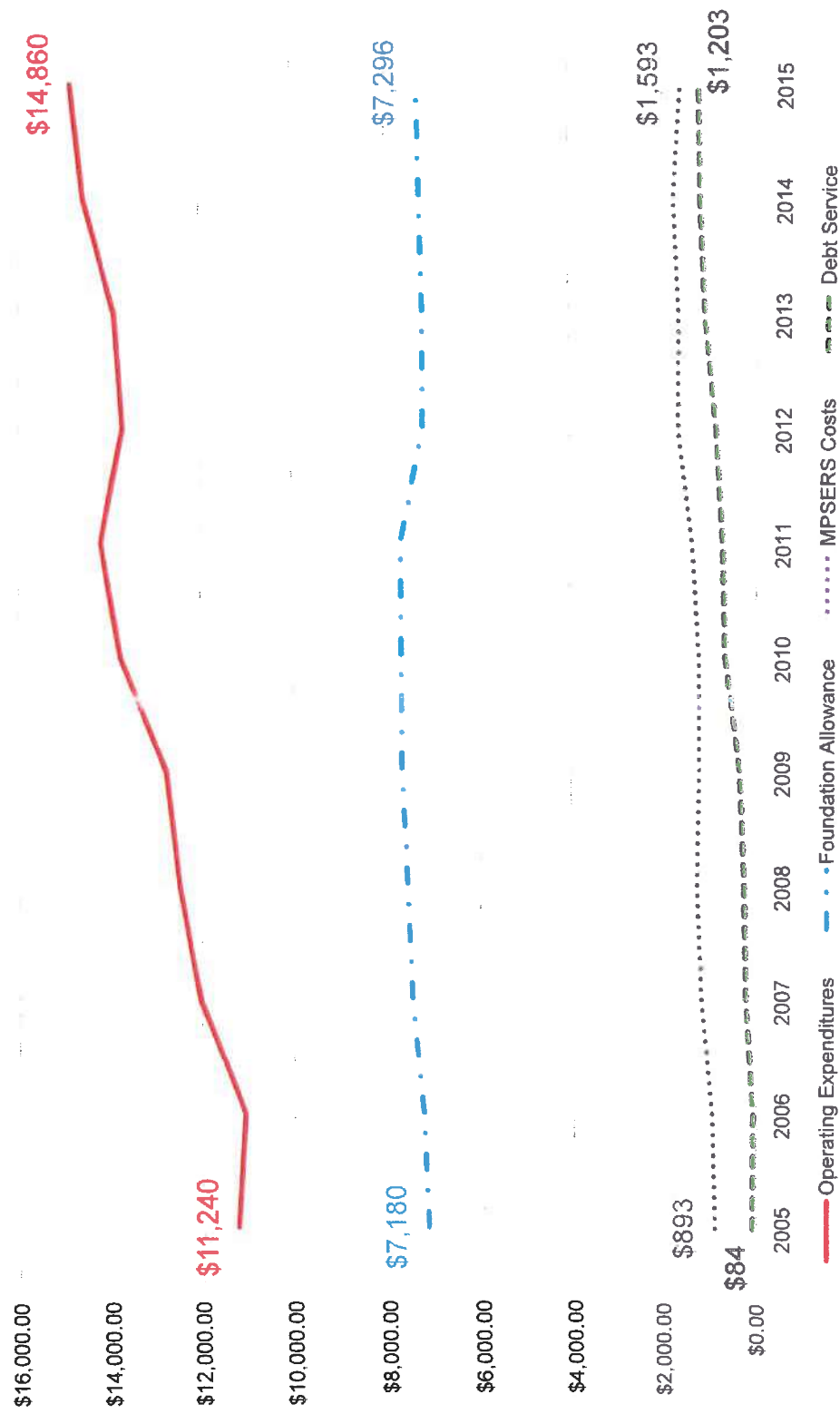
DPS GF Expenditures vs GF Debt Service Payments

General fund debt service (non-capital) payments have grown to 8% of all GF expenditures.



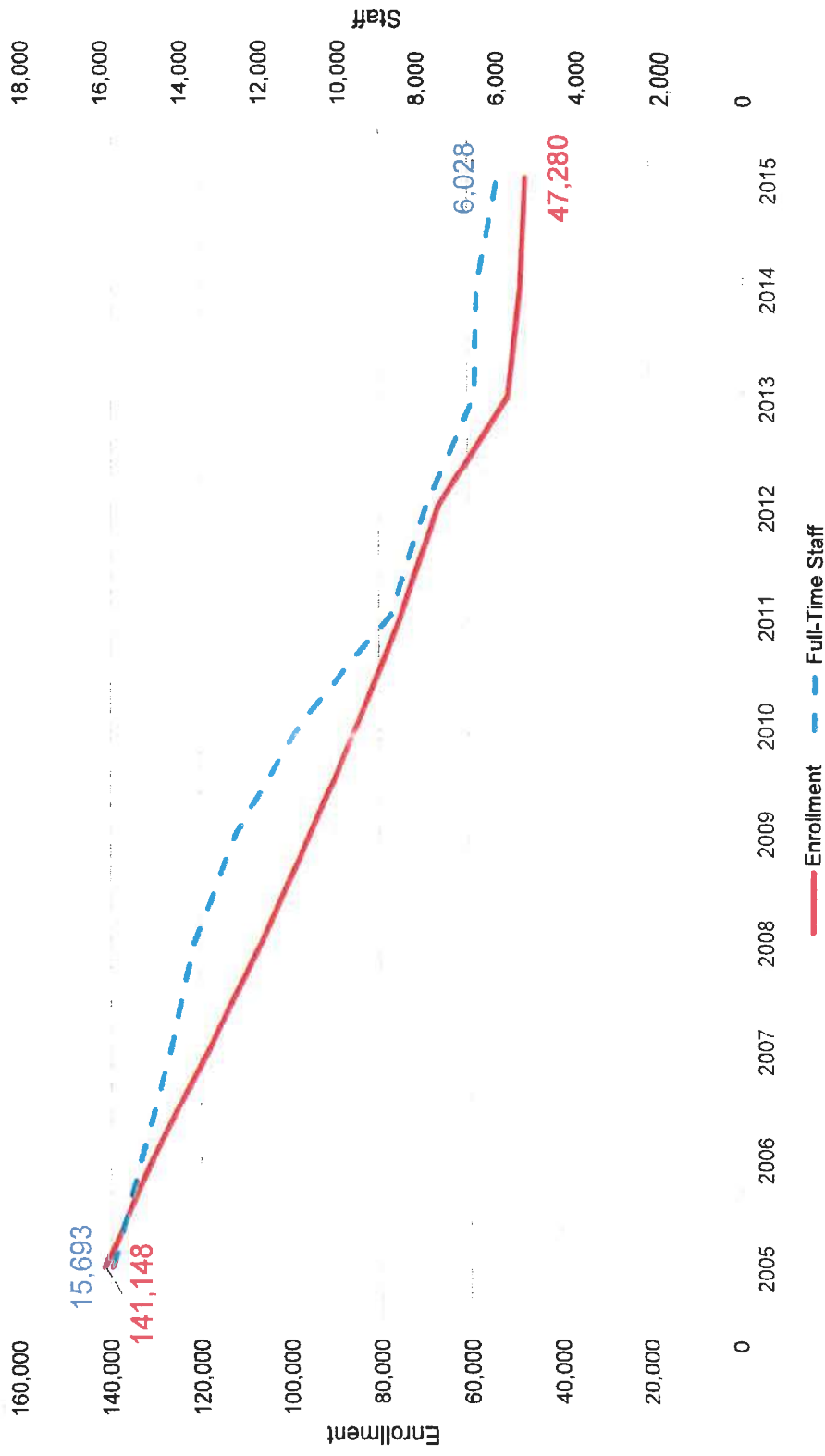
DPS Per Pupil Expenditures

Operating Expenditures per pupil have increased by \$3,620 over ten years. During that period, the DPS foundation allowance has increased by \$116 per pupil while MPSERS and debt service payments increased by approximately \$2,800 per pupil.



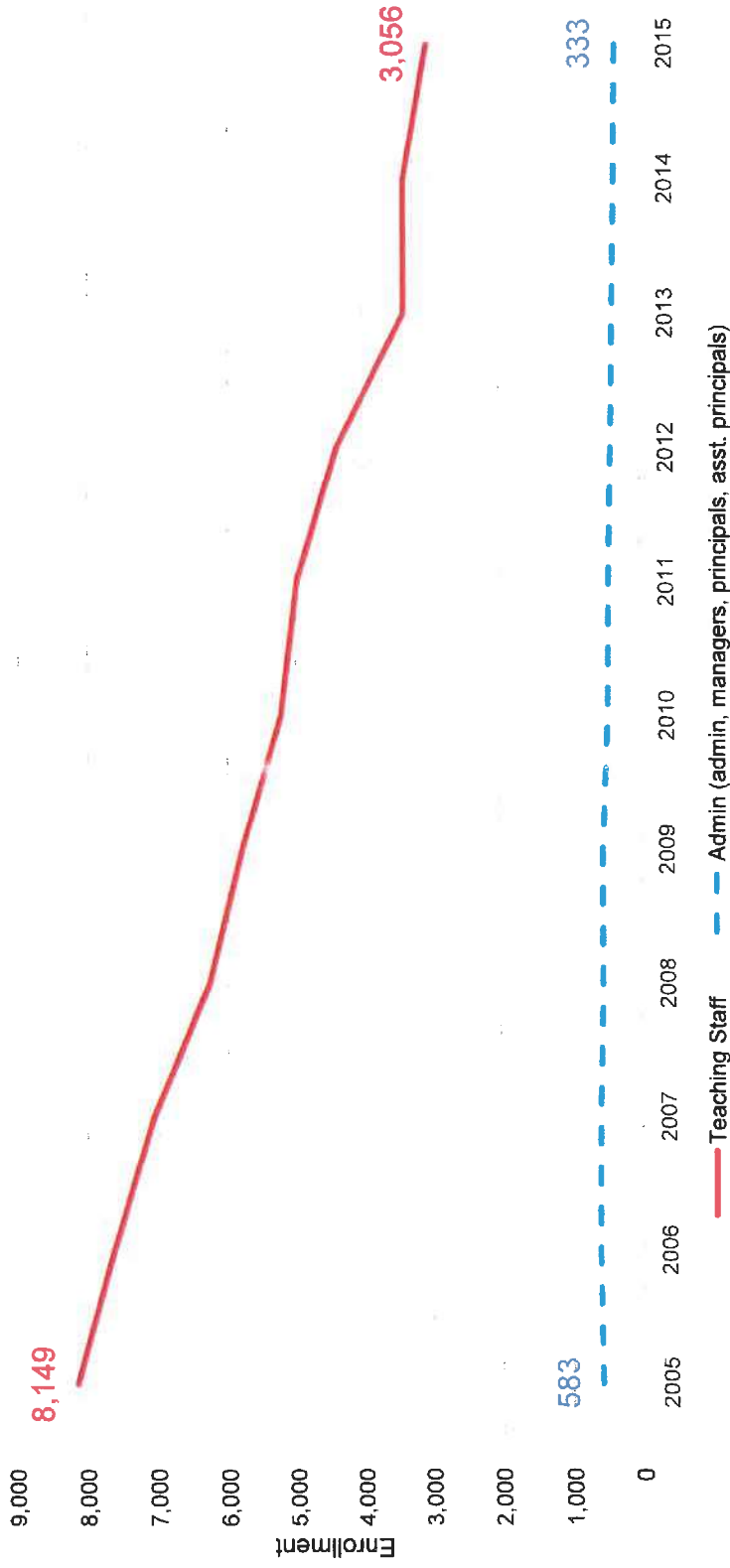
DPS Enrollment vs. Staff Levels

Over 10 years, enrollment has declined by 66.5%, and staff levels have been reduced by 61.6%. During that time, the number of school buildings was reduced from 232 to 90, or by 61.2%.



DPS Staff: Teachers and Administrators

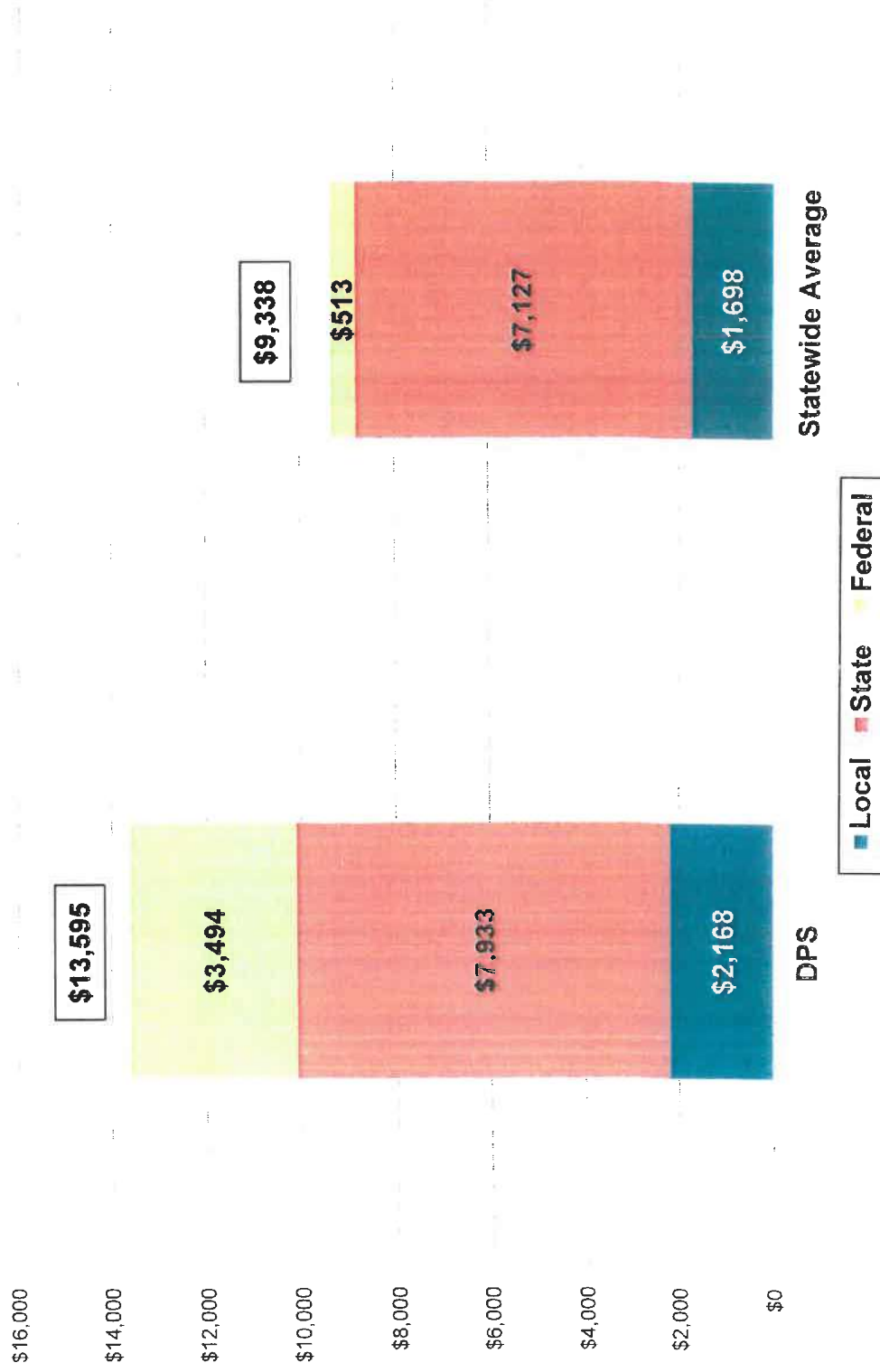
Over 10 years, the number of teachers has been reduced by 62.5%, while the number of administrators has been reduced by 42.9%.



Pupil:Teacher Ratio	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
DPS	27	28	26	27	26	29	24	25	32	28	31
Statewide Average	22	23	23	23	22	23	23	23	23	23	23

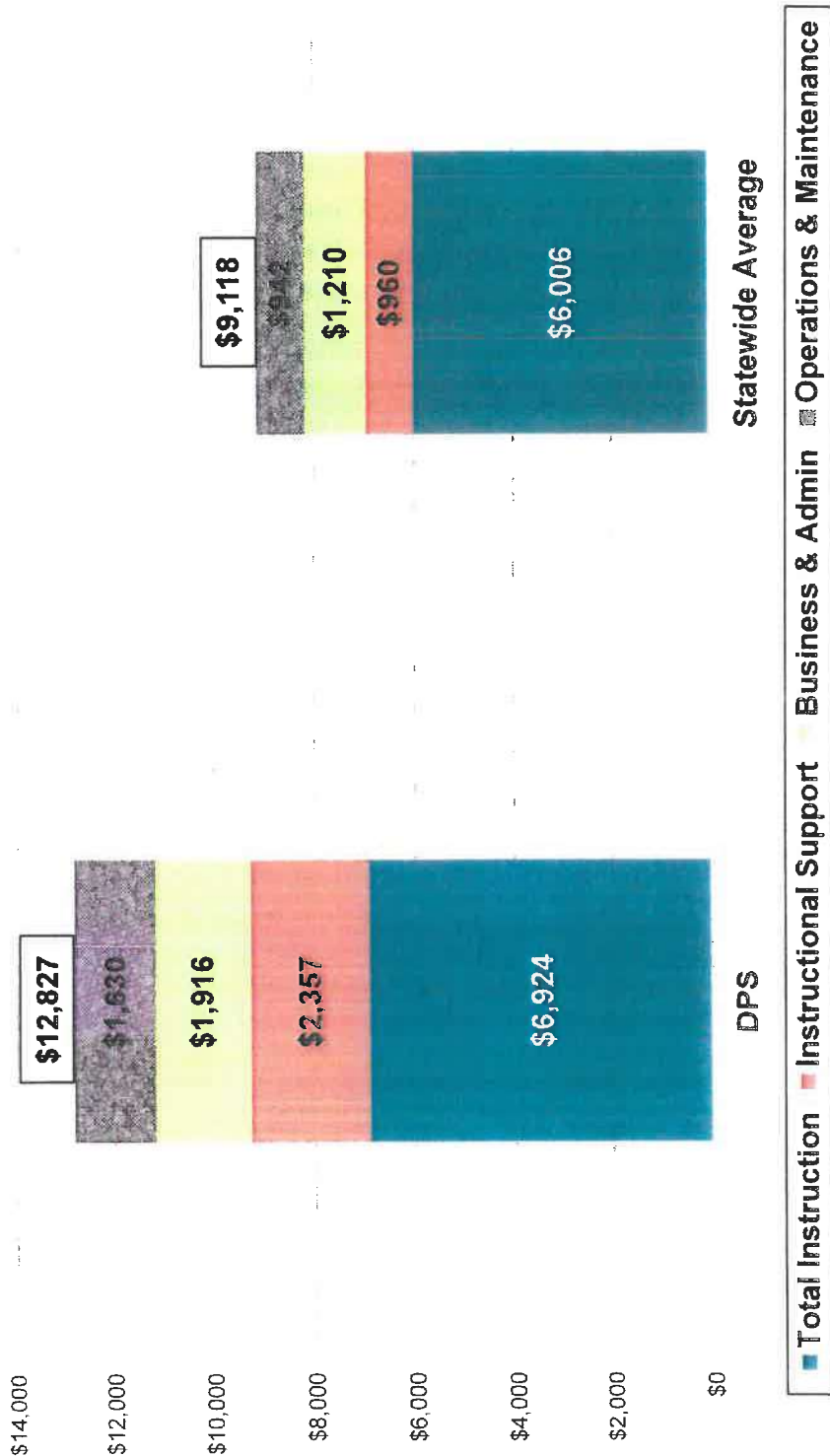
FY 2014-15 Per Pupil Revenues: DPS vs. Statewide

For FY 2014-15, over 2/3 of the difference in total funding between DPS and the statewide average is due to a significantly higher number of federal dollars.



FY 2014-15 Per Pupil Expenditures: DPS vs. Statewide

While DPS spent more on instruction and instructional support, it also spent 58% more on administration and 73% more on operations/maintenance compared to the statewide average.



	Statewide	DPS
Average Teacher Salary	\$61,978	\$63,716
Percent Free Lunch	41%	76%



www.house.mi.gov/hfa

EXHIBIT 8

Labor Arbitration Decision, 162319-AAA, [Number redacted], 2014 BNA LA Supp. 162319

Arbitration Decision

In the matter of Arbitration Between Employer And Local __ American Federation of Teachers

[Number redacted]

April 30, 2014

Appearances:

For the Union: B__, Attorney

J__, President

O__, Controller

F__, Financial Analyst

R__, Exec. Vice President

For the Employer: A__, Asst. Director Labor Relations

L__, Chief Human Resources And Labor Relations Officer

G__, Dir. Office of Payroll

I__, Dir. Office of Mgmt & Budget

S__, Witness

Q__, President & CEO

**AMERICAN ARBITRATION
ASSOCIATION**

Tanzman, Arbitrator.

**Arbitrator
Statement
And**

Award

Issue: Denial of Payment Tip Monies-Class Action
AAA Case Number

December 17, 2013

Arbitration Attendance-Hearing #1

January 23, 2014-Hearing #2

Same as Hearing #1-Plus

B__, Attorney

N__

J__, President

Labor Generalist, D.P. S.

Hearing Location:

/s/

David S. Tanzman

Arbitrator

The S__ (hereinafter, "The District") and the City Federation of Teachers Local __ (hereinafter, "The Union") selected Arbitrator David S. Tanzman via the American Arbitration Association to hold hearing(s) on an unresolved set of disputes constituting a class action grievance pertaining to a so-called Termination Incentive Plan (hereinafter, "TIP") and issue a final and binding award thereon.

The Arbitrator held two joint hearings with the Parties December 17, 2013 and January 23, 2014 at the offices of the Employment Relations Commission.

Each Party was given full opportunity to make statements, present witnesses with supporting exhibits-31, to be exact-and finally agreed to submit post-hearing briefs to the Arbitrator by March 3, 2014 via the American Arbitration Association. Such was received and an award was then due by April 8, 2014, extended at the request of the Arbitrator to May 7, 2014.

ISSUE

Since the principal issue of the class action grievance pertains to the TIP employee accounts, at this time the Arbitrator has included contractual language of the TIP program.

B. Termination Incentive Plan

Beginning January 12, 2010 and ending with the fourth (4th) pay of the 2011-2012 school year (for a total of 40 payments), all salaried members of the bargaining unit (except assistant attendance officers, accompanists and members who work less than .50 FTE) shall have \$250 per pay deducted from their pay and deposited into a Termination Incentive Plan (TIP) account. (Deductions shall not be made for the four (4) summer checks for members on 26 pay-checks numbered 23-26). A total of all deposits into an individual member's TIP account shall be shown on the member's pay stub. Exempted salary, hourly and daily rated members shall not be required to pay into the TIP account but shall have the option to do so.

E. 2009 Termination Incentive Payment

Bargaining unit members who retire or resign from the District following ratification of the 2009-2012 Agreement shall receive a Termination of Service Bonus of one-thousand dollars (\$1,000) for each year of service with the District up to ten (10) years of service, with a cap of \$10,000. Bargaining unit members on layoff status shall not be entitled to this Bonus until such time as they are removed from the layoff list pursuant to Article Fifteen. However, no member's Termination of Service Bonus shall exceed the amount he / she contributed to his / her TIP account pursuant to Article Nine, Section B.

Members may elect to have their Termination of Service Bonus paid as a lump sum, deposited into an annuity, or deposited into a Tax Deferred Plan (TDP).

**Letter of Agreement
Between
The S__
And
The City Federation of Teachers
Article Nine
Professional Compensation**

The S__ ("District") and the City Federation of Teachers Local __ ("Union") hereby revise the language of the Termination Incentive Plan as previously written in the tentative agreement of December 3, 2009 to reflect the intent and implementation of the Termination Incentive Plan since January 10, 2010 as follows:

Termination Incentive Plan

Beginning January 12, 2010 and ending with the fourth (4th) pay of the 2011-2012 school year (for a total of 40 payments), all salaried members of the bargaining unit (except assistant attendance officers, accompanists and members who work less than the .50 FTE) shall have their pay reduced by \$250 per pay. (For members on the 26-pay schedule, the reduction will not be made for the four (4) checks for pay periods numbered 23-26). Exempted salaried hourly and daily rated members shall not have their pay reduced but shall have the option of doing so.

ISSUES IN DISPUTE

Are Union unit members who were denied monies each paid into a TIP plan, entitled to said monies if separated from their respective employment by termination for cause?

1.The Employer argues the sixty (60) day rule is applicable. The Union, the three (3) year rule.

The very nature of the class action grievance in which the grieving members make the claim for monies they had already earned impels the grievance singularly to be in the three (3) year rule. The Arbitrator accordingly rules the class action grievance timely. And now to the dispute.

2.The Employer asserts that the Union interpretation would frustrate the intent of the purpose of the cost-saving measure. The Union disagrees. The Arbitrator reacts as follows:

a.The Arbitrator senses a feeling that the number of terminations for cause may become more prevalent than heretofor as a means of not having to return the dischargee's TIP money in any form. Both Parties could frustrate the

intent if either Party's position would prevail. However, since the District manages and directs the work force, the potential rests on the managerial shoulders.

b. When processing a discharge grievance, ordinarily, it has often been resolved by allowing the discharge employee to resign. Thus, the individual would be in the status of one who resigns and would be compatible with that TIP Plan category. (A failing to renew a license is much less deleterious than physically harming a student).

c. Q___, Emergency Financial Manager, issued a bulletin to all eligible Union TIP members to vote for the Plan. In his detailed document to them, he urged them to vote for the Plan. His message included the following statement...."Teachers defer a small part of their salary in the first two years with guaranteed repayment in later years". Nothing in the contract language which he included in his message to the Employees, told them otherwise. The Union member had reason to anticipate a return of what was in effect a loan and the manner of its guaranteed return. He followed his "guaranteed repayment" with the language of the TIP Plan. As one with gubernatorial authority his expression carried weight and remained in the minds of the "TIP"sters to influence their voting on the agreement. The Arbitrator thus does not find the Union's position frustrating the intention of the TIP program.

d. Working for a specific salary, and having it withheld by agreement was the lesser of two so called evils. However, the guarantee Q___'s guarantee, made it palatable.

To then tell the member with a TIP account "Though you worked for this money you can't have it back since you are no longer part of us", this Arbitrator is under the impression that such is contrary to State and/or Federal regulations-aside from being misled by Mr. Q___.

e. As to the language of the Plan, the expression was apparently intended to be positive in all respects hence negative expression, such as death, discharge, incarceration were intentionally omitted, but not from the minds of the Parties.

f. Had the Parties intended to confine the program to "resign" and "retire" the insertion of the word "only" would have clamped it tight. Parole evidence would then apply.

The lack of language locking the categories burdens the concept of parole evidence. To rely upon "parole evidence" rather than inserting the word "only" results in vitiating that concept.

While the District charges with the "parole evidence" lance, it had no difficulty in adding "heirs" to the program of a deceased employee who had a TIP account, despite its non-existence in the TIP plan contract language.

Further evidence of inappropriate application of parole evidence is in the lack of articulation for the disposal of the balance of the TIP account of a deceased or a sustained discharged employee. The "deceased" account was eventually addressed by the District with understandable Union approval. The sustained discharge category is before this Arbitrator. Parole evidence has no legitimate place in this case.

CONCLUSION

In consideration of all the above expression resulting from careful review of the "Parties" testimony, their thirty-one (31) exhibits and post hearing briefs, the Arbitrator expressed his insight into the class action issue in dispute and reaches the following conclusion.

The TIP Plan cannot require employee's to in effect lend part of said employees earnings; commit to eventual return of said loan, then by any improper obligation and/or behavior for presumed sustained discharge become a reason for not returning said loan or its balance. To deny a "TIP"ster his/her earned money which he/she lent to the District, and assuming legitimate reason for termination for cause, in effect, is double jeopardy. He is discharged and being denied his earnings he lent to the District.

The TIP account was never intended to be unretrievable contribution to the District. It was in effect a loan. Discharging an employee holding a TIP account, is a circumstance whereby the District is saying it no longer wants to have

anything to do with you. The TIP account balance should leave along with any other possessions of the discharged employee.

ARBITRATOR AWARD

The Arbitrator issues the following award:

The Union employee who has been subject to a sustained termination for cause shall be given the balance of his/her TIP account within thirty (30) calendar days from the point said discharge is confirmed.

Said payment shall be effected as soon as possible, but in no event later than the last pay period in the month of June 2014.

Respectfully yours,

EXHIBIT 9

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANTHONY ADAMS, PRESIDENT OF
THE DETROIT BOARD OF EDUCATION,
ANNIE C. CARTER, CARLA D. SCOTT, M.D.,
TERRY CATCHINGS, OTIS MATHIS, DR.
MARGARET BETTS, REVEREND DAVID
MURRAY, IDA SHORT, TYRONE
WINFREY and, LAMAR LEMMONS, all of
Who comprise the DETROIT BOARD OF
EDUCATION,

Plaintiffs/Counter-Defendants,

Case No. 09-020160 AW

-v-

ROBERT BOBB, Emergency Financial Manager
For Detroit Public Schools,
Defendant/Counter-Plaintiff.

At a Session Held

On the ____ day of December, 2010

PRESENT: THE HON. WENDY M. BAXTER

ORDER

The Court issued an opinion contemporaneously with the entry of this order and the opinion is incorporated herein by reference in its entirety. Accordingly,

IT IS ORDERED that plaintiff's request for declaratory judgment is **GRANTED**;

IT IS FURTHER ORDERED that plaintiff's motion for summary disposition is granted in

part and denied in part under MCR 2.116(C)(10) and defendant's motion for summary disposition under MCR 2.116(C)(10) is granted in part and denied in part;

IT IS FURTHER ORDERED that the relief requested by the EFM, for enforcement of orders he deemed necessary to the accomplishment of his statutory duties under MCL 141.1239, which gives him the authority to issue such orders and MCL 141.1241(n), which gives him the right to require compliance with his orders and to seek court assistance if necessary is hereby enforced to this extent: The EFM has the legal right to have the Board comply with his orders and the Board has the legal duty to comply with orders unrelated to academic and educational programming;

IT IS FURTHER ORDERED that defendant's request that plaintiff's case be dismissed involuntarily is **DENIED**;

IT IS FURTHER ORDERED that the Board's request that the Court issue a permanent injunction is **GRANTED**;

IT IS FURTHER ORDERED that plaintiff submit a separate injunctive order for entry consistent with this opinion and MCR 3.310(C);

IT IS FURTHER ORDERED that the Court **GRANTS** plaintiff request for a writ of mandamus ordering the defendant/counter-plaintiff to consult with it regularly upon reexamination of the financial plan, including school closures for the Detroit School District. However, the request for additional mandamus relief by plaintiff/counter-defendant is **DENIED**;

IT IS FURTHER ORDERED that defendant's request for mandamus relief is **GRANTED** to the extent stated *supra* in this order;

IT IS FURTHER ORDERED that defendant/counter-plaintiff's request for mandamus relief related to title of General Superintendent Teresa Gueyser is moot;

IT IS FURTHER ORDERED that the defendant's motion for directed verdict on the claim that school closures impair education in contravention of MCL 141.1241(2)(s) is **GRANTED**;

IT IS FURTHER ORDERED that each prevailing party may submit an order for any remaining relief granted for entry consistent with the opinion under MCR 2.602(3).

Circuit Court Judge



**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**ANTHONY ADAMS, PRESIDENT OF
THE DETROIT BOARD OF EDUCATION,
ANNIE C. CARTER, CARLA D. SCOTT, M.D.,
TERRY CATCHINGS, OTIS MATHIS, DR.
MARGARET BETTS, REVEREND DAVID
MURRAY, IDA SHORT, TYRONE
WINFREY and, LAMAR LEMMONS, all of
Who comprise the DETROIT BOARD OF
EDUCATION,**

Plaintiffs/Counter-Defendants,

Case No. 09-020160 AW

-v-

**ROBERT BOBB, Emergency Financial Manager
For Detroit Public Schools,
Defendant/Counter-Plaintiff.**

OPINION

Summary of Decisions and Procedural History

The Plaintiff/Counter-Defendant is the Detroit School Board of Education (Board) for the Detroit Public School District, (DPS) and the named individuals are the elected members of the Board. Defendant/Counter-Plaintiff, Robert C. Bobb (Bobb), is the Emergency Financial Manager (EFM) for DPS. In the amended complaints, both parties' request writs of mandamus and the Board seeks permanent

injunctive relief and a declaratory judgment. The Board alleges that defendant violated a clear legal duty to consult with the Board upon regular re-examination of his written financial plan. The Board claims that the EFM has no authority to decide and administer DPS academic policies and curriculum and failed to consult with it when he effectively regularly amended the written financial plan for DPS by implementing his own academic plan, facilities plan and school closures, which the Board maintains impairs education. Bobb filed an amended counterclaim requesting a writ of mandamus to enforce his Executive Order 2009-1 to invalidate the Board's appointment of a General Superintendent on the basis that such action was contrary to its statutory duty and his authority.

After failed attempts to facilitate settlement between the parties, hearings were held pursuant to MCR 3.305(F), MCR 3.310(A)(2) and MCR 2.605(D) over several days. Approximately 81 exhibits were admitted into evidence; thereafter, both sides filed post hearing motions with supporting briefs under MCR 2.116(C)(8) and (9) for summary disposition. Defendant filed a motion for a directed verdict, claiming the Board failed to meet its burden to show that school closure impairs education under MCL 141.1241(2)(s), or that Mr. Bobb acted outside his statutory authority by implementing his academic plan, his Master Facilities Plan, his orders ending social promotions, instituting quarterly benchmark assessment testing aside from the state mandated MEAP test and terminating parental liaisons. Defendant asked this Court to dismiss Plaintiffs' action under MCR 2.504(B)(2). The Board is entitled to mandamus relief. The mandamus relief defendant requested is a moot issue. The Board is granted declaratory and permanent injunctive relief. The EFM's motion for directed verdict is granted on the issue presented based on MCL 141.1241(2)(s) and also granted in part for enforcement of certain of his orders, e.g. terminating parental liaisons, but not those orders concerning education. The motion to dismiss this action is denied.

HISTORICAL RETROSPECTIVE AND PROSPECTIVE

The current governance structure under the Revised School Code is that the 11-member school board for the school district leads DPS with four members elected at large and seven members elected from the election districts.¹ This structure came about after the first time a governor intervened in the operations of DPS. In 1999, (then) Governor Engler imposed a body that became known as "The Reform Board" and outright suspended the powers and duties of the DPS school board.² (Under the language of the law authorizing this,) Detroit was the only qualifying district with, at the time 180,000 students. Now it has approximately 70,000 students. The reform board was a onetime only occurrence and the act no longer applies to Detroit, although the statute has not been repealed.

¹ MCL 380.410.

² MCL 380.371.

In contrast, the EFM is appointed by the governor under the authority of the Local Government Fiscal Responsibility Act, (LGFRA, "Act") It does not solely apply to school districts. It is a statute concerned with all levels of state government. Article 3 of the Act, found at MCL 141.1201 *et. seq.* governs school districts and it does not apply only to the Detroit district. The state superintendent of public instruction is responsible for monitoring the financial soundness of school districts to insure that they follow the state laws on budgeting and accounting.³ If the superintendent determines that a district has a serious financial problem, as set forth in MCL 141.1233, the statutes provide for certain steps to be taken, ultimately recommending that the governor appoint an emergency financial manager.⁴ Thus, while the reform board was a onetime occurrence that only applied to Detroit and had a specific time limit, the appointment of the EFM can happen in any school district and the appointment is not limited in duration; while in this instance there is a 1 year contract, an EFM may reign for as long as the financial emergency exists. The LGFRA is concerned with financial matters. The reform school board had authority to act and perform all the duties of a duly elected school board MCL 380.373(3), which is concerned with both finances and academics.⁵

Some of the very same community activists, concerned citizens, parents, teachers, preachers coalitions and voting rights groups who feel aggrieved by the actions of this EFM, felt aggrieved by the imposition of the "Reform Board" and sued that board all the way up to the United States Supreme Court in *Moore v. School Reform Board of the City of Detroit*, 147 F. Supp. 2d 679(ED Mich 2000).⁶ Many of the same people attending this litigation feel school is a matter of local control and view gubernatorial meddling as riding roughshod over the voting rights, parental rights and rights of self determination of Detroiters. Those groups were focused on language like that found in the school code at, e.g., MCL §380.10.

"Rights of parents and legal guardians; duties of public schools. Sec. 10. It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment."⁷

The problem with that focus is that in Michigan there is no requirement in our constitution that mandates that schools be under the control of the local voters of the

³ MCL 141.1232.

⁴ MCL 141.1238.

⁵ See e.g. MCL 380.1278, core academic curriculum.

⁶ Certiorari denied, *Moore v. Detroit Sch. Reform Bd.*, 2003 U.S. LEXIS 1521 (U.S. Feb. 24, 2003).

⁷ MCL 380.10

school district. In fact, a review of our constitutional history shows that our forefathers envisioned public education to be under the control of the entire state electorate, which means schools are under the command of the Legislature. It has been that way for centuries. The Constitution of 1835 stated: "The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district." There was no requirement in the 1835 Constitution that the members of the school board for local district be elected by the local voters. A review of the history of the education article shows that there has never been a requirement that the local school board had to be appointed by a public body. In fact, there are several schools in the state that are organized and maintained without any local control.

Later, at the 1850 Constitutional Convention, the education article was amended; and after much debate, Michigan again placed the legislature in charge of schools. A constitution delegate noted,

I think that the legislature should establish by law a system of common schools, and I think the subject should be left in their hands; as the system is in progress, it should be left for the Legislature to decide upon, and properly amend it from time to time. We might adopt a system that would, in the practical working, be found not to be the best. This matter should be left to be judged upon by the progress of the age.⁸

However, there is a division of labor and purpose in public education: the State Board of Education is constitutionally mandated to lead and supervise public education, while the Legislature is constitutionally mandated to maintain and support it.⁹

When the court in *Moore* ruled that the school reform board act was constitutionality valid, it quoted legislative debate in the opinion. The bill's sponsor stated that the bill's purpose was to improve education for a large number of Michigan students. The whole purpose was to improve education of students in a district that had serious problems with governance, administration, management, finance, and operations, with poor student achievement test results and high dropout rates. Those problems not only still exist but have since intensified and become inflamed.

Fast forward to today and nothing has changed in the 1963 Michigan Constitution with respect to state control of public education with one important exception; the statutory creation of charter schools, more recently dubbed "public

⁸ *Council of Organizations v. Governor*, 455 Mich. 557, 564(1997).

⁹ See Mich. Const. 1963, Art. 8, §2 and §3.

school academies, urban academies and schools of excellence.¹⁰ Act 362 specifies the power to grant academy contracts is vested in four types of authorizing bodies, one of which is the board of a school district. No matter what they are called, charter schools or these incorporated organizations are eligible for public funding under the State School Aid Act.¹¹ It has been argued that this effectively allows turning public schools over to organizations that are paid with public dollars but are operated like private enterprises. If the current EFM can dictate the DPS academic plan, or step into the shoes of the Board and authorize charter schools, then that fiscal expert can bind this Board and DPS to contracts for education far into the future which may be subject to very little control, oversight, or revocation by the Board, the local parents and citizens or the State Board of Education depending on the contract and/or according to statute.¹² Mr. Bobb created public school academies based on the Revised School Code amended as recently as 2009. It has a tortured court history of battles concerning its constitutionality that the legislature responded to when the court noted that the enabling statute for charter schools had no mechanism that mandated that a public body select the board of directors of an academy. *Council of Organizations v. Governor*, 455 Mich. 557, 564(1997).

In January 2010, Mr. Bobb appeared before the Michigan legislature to address it concerning declaration of an "academic emergency" urging that it to give academic control over DPS to the EFM, which would have made this action moot. They did not: Although the legislature appointed a committee, no bill has been passed; and the laws scheduled to take effect on in March 2011 seem to indicate that an EFM may have some input on school reform and redesign, yet responsibility for education continues to rest with school boards.

FACTS

The underlying facts are not substantially in dispute. Pursuant to Section 33 of the Local Government and Fiscal Responsibility Act (LGFRA), MCL 141.1233, the state superintendent of public instruction notified the governor and the state board of education that a financial emergency exists in the Detroit School District due to serious financial problems. In response, the governor appointed a review team to evaluate the financial condition of the District. The review team's 2008 report substantiated the findings of the superintendent of public instruction. There were a number of deficiencies in the Board's management of the District's finances—cash flow shortages, questionable expenditures, and a long history of serious deficit spending.

¹⁰ "[A] public school academy is a public school under Section 2 of Article VII of the state constitution of 1963, and is considered to be a school district for the purposes of Section 11 of Article IX of the state constitution of 1963.

¹¹ See generally, MCL 380.01 *et seq*; MCL 388.1601 *et seq*.

¹² *Id.*; MCL 141.1241(c).

Page 3 and 4 of its report stated:

The school district consistently has operated in a deficit condition for a number of years. General fund expenditures of the School district exceed general fund revenues during seven of the eight fiscal years examined. The operating deficits ranged from a low of \$10,631,337 in 2000 to a high of \$122,167,428 in 2003; the estimated operating deficit for the 2008 fiscal year is \$112 million. In many of the years during this period, general fund expenditures did not decrease or did not decrease commensurately in proportion to the decrease in general fund revenues. For example, general fund revenues decreased by \$17,222,085 in 2001, compared to the prior year, but general fund expenditures increased by \$10,193,257. Similarly, for the 2003 fiscal year, general fund revenues decreased by \$19,006,122 compared to the prior year, while general fund expenditures increased by \$43,833,180.

The pattern of deficit spending by the School district was facilitated by a succession of short-term notes. However, during the 2005 fiscal year, School district officials refinanced outstanding cash flow notes by issuing \$210 million in bonds payable over a 15-year period. The effect of this refinancing was to convert what had been short-term debt into long-term debt. (Ex. 1 to Plaintiff's Memorandum of Law).

In an effort to resolve the District's financial problems, it entered into a consent agreement with the review team setting forth a financial recovery plan to alleviate the DPS's financial problems. As a result of the District's inability to successfully implement the provisions of the consent agreement, the Governor, in accordance with the provisions of the LGFRA and after Robert Cleveland Bobb had an interview with Tim Flanagan, from the Michigan Department of Education and Governor Granholm, the governor appointed Mr. Bobb emergency financial manager of Detroit Public Schools (DPS's EFM) on March 2, 2009 by formal contract. The Act mandates that the selection of the EFM, is based "solely" on his competence in fiscal matters.¹³

Robert Cleveland Bobb testified on June 11, 2010 that he received a Bachelor's degree in political science in 1968 and a Master's degree in business science in 1978. He is a former president of the Washington D.C. School Board from 2006-2008. He held a position of city manager in Washington. In that post, one of his duties was to review the budget for the school board and he held a similar

¹³ MCL §141.1238(2)

post and duty in Richmond, Virginia. He was a Broad Foundation Fellow, chosen to participate in "urban superintendence academy" (*sic*) once a month for ten months, studying a particular U.S. urban school district. In his case, Mr. Bobb did not study the Detroit School district, nor is he a resident of Detroit or from this area of the country. He has no background in teaching, education or curriculum studies.

§141.1241 of the Act requires the EFM to "immediately assume control over all fiscal matters" for the school district. The primary responsibility for the EFM is set out in §141.1240 which states in subsection 1: "In consultation with the school board, the emergency financial manager shall develop, and may from time to time amend, a written financial plan for the school district." Once the plan is developed, according to subsection 2: "the emergency financial manager in consultation with the school board shall regularly reexamine the plan..." The EFM is authorized to implement his original written plan and modifications to the plan without any approval process, although the Act states he must, in consultation with the Board, regularly reexamine the plan.

The parties agree that Bobb developed a written financial plan on which he consulted with the Board in June 2009. The EFM subsequently wrote the Master Facilities Plan, dated March 17, 2010, nine months after the parties agree a consultation occurred. Bobb made it plain and public that he had other plans, but the Board denies that it was consulted and to some extent Bobb admits he did not consult with the Board:

Q. All right. In any event, would it be fair to say other than the meeting that this court ordered you to attend you have not been at a board meeting since July of 2009?

A. That's correct.

Q. And would it be correct that sometime in August of 2009 the board brought this action against you?

A. Correct. And if I may --

Q. Well, no, let me --

A. Yes, that's true, but if I may, in the world that I grew up in, in my

30-something-plus years of managing cities and having spent time in the private sector, every lawyer that has represented me either as a city attorney or as a private counsel, whenever I have been sued, has said now you speak – you only speak to the party that's bringing the lawsuit against you through their lawyers; but I might add that I did not discontinue having individual conversations with board members.

So you bring this lawsuit against me. In the years that I've been counseled, before the years have always been to have no direct conversation with the party bringing the lawsuit against you, that those conversations take place between the attorneys. That's the way I have trained and that's the process that I've followed over the years.

But in this instance, I did not discontinue having individual –

* * *

Q. Mr. Bobb, so you decided once the board brought a lawsuit against you that you weren't going to go back to their meetings, correct? Isn't that what you said?

A. Well, once they brought a lawsuit there was no need to.

Q. In your mind?

A. In my mind.

Q. And you never sent a letter to the board saying, "I'm not coming to you because you're suing me," correct?

A. No.

Q. Never sent an e-mail, a memo, anything of that nature saying that?

A. No. And I never stopped meeting with the individual board members who chose to meet with me, either.

Q. I understand. But you decided they brought a lawsuit so, "I'm not going to come see you," and you didn't bother to tell them that, right?

A. I'm going by what -- the way that I have been counseled in the past, and I'm certain the way that they have been counseled as well, perhaps.

Q. All right. So you made the decision based on whatever experience you've had in the past just to not go talk to the board, correct?

A. That's the way I've been trained.

Q. All right. So it didn't matter what the issue was, you weren't going to talk to them, true?

A. Not if you file a lawsuit against me. We'll talk through our attorneys.

Q. Well, did you send your attorney to the board meetings?

A. No.

Q. So you didn't send anybody to the board meetings, true?

A. No. Their attorneys approached my attorney, as I recall.¹⁴

It is essentially undisputed what conduct and acts were committed by the EFM that the Board points to as either a usurpation of its' academic authority or a violation of the EFM's duty to regularly consult when amending the written financial plan and are chronologically as follows:

- On August 31 through September 3, 2009, contracting with Houghton Mifflin to purchase \$40,000,000 in textbooks and online resources without informing the Boards or input from the Board, or using the Board's book adopting process and without regard to the recommendations based on need assessment made by the Board's academic advisors (Plaintiffs' Exhibit 6);
- On December 16, 2009, defendant's designee changed the instruction environment to deficit teaching as opposed to grade level teaching preferred by the Board (Dr. Irene Norde Tr. 5/21/10);
- On or after January 25, 2010 defendant implemented Quarterly Assessment test other than the mandated MEAP test, without input from the Board, declined to cease and desist the administration of said test in response to the Board's demand to do so; then, countermanded a directive from the Board's Superintendent to end Quarterly Assessment testing (Plaintiffs' Ex. 11.);
- On February 12, 2010 defendant issued an order styled "Order Terminating Practice of Social Promotion in the Detroit School District" (Plaintiffs' Ex. 14.);
- On February 17, 2010 amended the written financial plan without consultation with the Board (Plaintiffs Ex. 21.);
- On March 1, 2010 Appropriated and eliminated the Board's academic staff and ordering that all academic personnel in DPS are to report to him, his designee and not to the Board's executive official on academics, the Superintendent. (Tr. 6/11/210 p. 45-49) (Plaintiffs' Ex. 12.);
- On March 11, 2010 defendant, by his signature in his capacity as EFM for DPS, aligned himself with "Taking Ownership; Our Pledge to Educate All of Detroit's Children," an academic plan in direct contravention of the Board's academic plan. (Plaintiffs' Ex. 7.);
- March 15, 2010 published an academic plan styled "Excellent Schools for Every Child: Detroit Public Schools Academic Plan" to implement instead of the Board's academic plan dated 07/09/2009, without consulting or informing the Board; (Plaintiffs' Ex. 8.);
- March 17, 2010 released his Master Facilities Plan for 2010-2015 without engaging in any consultation with the Board and appeared pursuant to this

¹⁴ Transcript June 11, 2010 Testimony of Robert C. Bobb, pg 15-20, generally.

court's order, at the April 30 Board meeting prepared to discuss both the Master Facilities Plan and his academic plan but was not permitted to proceed. (Ex. 16, Joint Ex. 39 Ex. 34A);

- On June 4, 2010 Defendant and his team met with 3 or 4 Board members to discuss the proposed Master Facilities Plan; and
- On June 7, 2010 announced the Master Facilities Plan.

Plaintiff postulated an academic plan on July 9, 2009 for DPS in accordance with its' authority pursuant to MCL 380.11a(3), the Revised School Code. (Code) (Exhibit 1), specifically Section 1278 (MCL 380.1278), empowers and places a duty upon the board of a school district to establish a core academic curriculum for its students. Sections 1278(3)(a) and (b) provide:

(3) The board of each school district, considering academic curricular objectives defined and recommended pursuant to subsection (2), shall do both of the following: (a) Establish a core academic curriculum for its pupils at the elementary, middle, and secondary school levels. The core academic curriculum shall define academic objectives to be achieved by all pupils and shall be based upon the school district's educational mission, long-range pupil goals, and pupil performance objectives. The core academic curriculum may vary from the model core academic curriculum content standards recommended by the state board pursuant to subsection (2). (b) After consulting with teachers and school building administrators, determine the aligned instructional program for delivering the core academic curriculum and identify the courses and programs in which the core academic curriculum will be taught.

Plaintiff posits that the Act, from which the Defendant, Mr. Bobb, derives his authority, made no changes in the academic sections of the School Code, from which the Board derives its' authority.

It is also undisputed that Mr. Bobb admitted that he made a decision on what he would do as the EFM: After he read the Governor's transition team report, the Great City School Report and consulted with the Broad Foundation, Bobb decided that he wanted to leave five policies in place in the Detroit public school district. He called these the "five products." The first of the products was an academic plan.¹⁵

Q: And that was going to be a plan that charted out the academic

¹⁵ (Transpt., at p 15, l. 17.)

policies and future of the district, correct?

A: That's correct. Because the easiest thing to do would be to come in and balance the books without any regard to product[.]

Q: But if you could just list the other four items that you wanted to leave.

A: The first one is to develop for the Detroit Public Schools an academic plan for the 21st century teaching and learning... And that plan would form a master plan for safety and security[.]

Q: And that's number two, safety and security.

A: That's number two.

A: The third one is to ensure that we have a massive plan for facilities improvements.

Q: All right. And I assume the academic plan would inform and guide—

A: The academic plan informs all of these plans.

Q: [A]nd the fourth one would be what?

A: Plan for parental involvement and community engagement.

Q: And the fifth one would be what?

A: The fifth plan would be a five-year, long-term financial stability plan, of which would have been informed by the products from the four in a logical context.

A: I came with the intention of balancing the books, and I recognized the fact that it's easy for someone who is a turn-around specialist to come in and slice the budget and balance the books, but in the school district, balancing the books means what impact will you have on kids

[w]hen the financial decisions were being made, could have someone in the room who would debate the financial decision with respect to the impact that the financial decisions would have on teaching and learning[.]

Q: And the academic plan was going to be your academic plan, not the elected board's plan; am I correct?

A: No one can give me an academic plan for Detroit Public Schools. I didn't find one. What we had was a road map, the Counsel Of Great City Schools road map, the trans- the governor's transition team plan road map.

Q: But you had decided when you came in that you were going to write your own academic plan. Correct?

A: I decided when I came in, before I walked out the door in March of last year, that there would be a long-term master education plan for Detroit Public Schools.

Q: And am I correct that the board, sometime in the summer of 2009, adopted an academic plan written by Teresa Gueyser?

A: Yes.

Q: Did you provide any comments to the school board on that plan?

A: No.

Q: You didn't send them anything on that plan?

A: No.

Q: You just wrote your own plan

A: Correct.

A: I believe I had the power to do it, correct.

Q: But you decided on your own to do that?

A: Yes.

The powers and duties of the school board are set out at Part 16 of the School Code of 1976, MCL 380.1201 *et seq.* The board claims that the EFM overstepped his statutory authority in making an academic plan and educational policies for the District and take exception to plans, other than the initial written financial plan the Act mandates, and policies which they claim are a usurpation of academic power which is reserved to the Board pursuant to the Code, specifically at MCL 380.11a. Defendant maintains that the LGRFA, *viz* §141.1238 *et. seq* allow him to exercise all authority that the School Board exercises, and also responds that his policies and plans are inextricably tied to the financial management of the District, his contract with the governor required him to command academics and generally all actions affect finances of the district which he reasons allows him to do all things. Mr. Bobb claims his education and academic action, particularly ordering quarterly assessment tests, increase federal and state funding under No Child Left Behind and Title II and Title VII. Further, the EFM claims, social promotions in early elementary education leads to increased high school drop-out rates which in turn decreases funding.

After the Board filed an amended complaint, it requested injunctive relief to stop the EFM from imposing his academic plan, educational assessment testing and school policy edicts and the Board is also requesting writ of mandamus to require the EFM to consult with the Board as he amended his written financial plans by changing the Master Facilities Plan, which announced closure of 100 schools; then, incrementally, closed 42 to 57 schools. The number of school closing changed frequently, even during the period of the hearings and oral arguments for this dispute. With each modification the EFM implemented to the Facilities Plan, there was a concomitant change and public pronouncement to the kinds of schools and school programs available, the school hours of operation, the curriculum offered in each facility and the school year. The Board now seeks permanent injunctive relief, and a declaratory judgment against defendant to address the extent of an EFM's powers concerning academic policies and mandamus relief from the regularly amended the facilities plan - which is the equivalent of amending the written financial plan--without consulting the Board

Both parties request mandamus relief. Specifically, the Board saliently requests the Court to issue a writ of mandamus ordering EFM Bobb to:

1. Consult with the Board, not individual board members as he regularly amends the written financial plan for the Detroit Public School District and in particular amending the school closures as required under MCL 141.1240 (2);
2. Cease and desist from making any decisions concerning academics, curriculum, assessment testing and/or educational policy, sessions, courses, and programs within the Detroit Public School District, as those functions by the EFM are unauthorized by the Act and are solely within the purview of the Board under the Code;
3. Cease and desist undermining the Board's ability to lead and supervise education in DPS by issuing orders effectively nullifying

- all Board authority over teaching, deficit teaching, teachers, testing, programming, book adoptions, assessment testing and social promotion;
4. Negating the Board's appointment of Teresa N. Gueyser to the titular permanent position of General Superintendent of the School District;¹⁶
 5. Cease and desist issuing orders on deficit teaching, social promotions; and
 6. Cease and desist implementation of the Master Facilities Plan and the Excellent Schools for Every Child Academic Plan or any academic plan proposing K-14 campuses and "marketplace" grade schools and school closures that impair education.

Defendant posits that the Board's authority and responsibilities as provided by law are subordinate to EFM's authority under the statute in all matters affecting the financial condition of the school district including academics, curriculum, and educational policy. Defendant cites MCL 141.1241(2)(f) as authority for this proposition:

(2) In implementing this article and performing his or her functions under this article, an emergency financial manager may take 1 or more of the following actions:

(i) exercise the authority and responsibilities affecting the financial condition of the school district that are prescribed by law to school board and the superintendent of the school district,

Defendant requests that Plaintiffs' case be dismissed, involuntarily; however, according to Plaintiff, Mr. Bobb has failed to consult with the Board regularly when reexamining and amending the written financial plan as provided for in MCL 141.1240(2). Bobb concedes it may be fair to say there have not been consultations with the entire board or in any way the Board insists is required; however, the Board's ideas about what the act requires in terms of consultation are incorrect.

IMPAIRING EDUCATION CLAIM UNDER MCL 141.1241(2)(s)

Defendant's arguments against any finding that defendant violated this facet of the statute are twofold: First, the defendant argues that closing a school building is neither selling it nor using it according to the common understanding and usage of those words; furthermore, the closings were not done to "meet past or current obligation," rather the closings are done to save the district money in the future. Secondly, applying the "impair education" language to the school closings, defendant highlights that the evidentiary record is in his favor: The Board's expert Dr. Lipman, witness admitted that she had no opinions that the Master Facilities Plan for school closing impaired education, while Bobb's witness, Barbara Byrd Bennett,

¹⁶ Teresa Gueyser is no longer employed at DPS.

testified that the plan would not impair education. Based on the evidentiary record, this Court agrees that the defendant's motion for directed verdict on the claim that school closures impair education in contravention of MCL 141.1241(2)(s) must be granted.¹⁷

STATUTORY CONSTRUCTION

The Board acknowledges that the EFM has broad powers when it comes to the management of the district's finances, but it asserts that he is making decisions that exceed his authority. It is urged that his decisions on academics and curriculum and school policy are within the exclusive responsibility of the Board.

The EFM argues that statutory construction requires that the Act be obeyed and the Code is not dominant. Mr. Bobb relies on *People v. Schneider*, 119 Mich App 480, 486(1982). Defendant argues that the Revised School Code is general to the organization of the state system of schools, touching on all areas of education of elementary and secondary schools and school districts; *vis a vis* the Act is specific to addressing emergency financial situations that may arise in units of local government, including school districts. The Act, defendant maintains, interposes a very specific layer over the Code's general outline of how the system of public education in Michigan is structured. Defendant extrapolates that regarding the matter at hand -- the financial emergency in the DPS-- the Code grants the Board general authority over the operations of the district, whereas the Act grants the EFM specific authority to act in an emergency situation. Thus according to defendant, the Act is the more specific statute and was enacted later in time; for both these reasons, the Act should be read as controlling if it is in conflict with the code.

It is the function of the judiciary to determine existing rights, not to exact or repeal legislation.¹⁸ The cardinal rule of statutory construction is to determine and effectuate the intent of the legislature.¹⁹ When the Legislature's statutory language is clear and unambiguous, judicial construction is neither necessary nor permitted and courts must apply the statute as written. If reasonable minds can differ regarding the meaning of the statute, judicial construction is appropriate.²⁰

Courts presume the legislature intended meaning plainly expressed in the statute.²¹ Judicial construction is permitted if the language is unclear and susceptible to more than one interpretation.²² If the statutory language is ambiguous or reasonable minds may differ in its interpretation, a reasonable construction must be

¹⁷ See discussion on permanent injunction, *infra*.

¹⁸ *Allas v. Wayne County*, 281 Mich 596(1937).

¹⁹ *Melia v. Employment Security Comm.*, 346 Mich 544, 562; 78 NW 2d 273(1956).

²⁰ *USAA Ins. Co. v. Houston Gen Ins Co.*, 220 Mich App 386, 389-390; 559 NW 2d 98(1986).

Oakland Co. Bd of Co. Comm'rs v. Mich Prop & Cas Guaranty Ass'n, 456 Mich 590, 604(1993).

²¹ *Cowen v. Dept of Treasury*, 204 Mich. App. 428, 431; 516 NW 2d 345(1994).

²² *Id.*

given in light of the purpose of the statute.²³ When alternative interpretations are possible, a court must ascribe to the legislature the most probable and reasonable intention.²⁴ Statutes must be construed to avoid absurd or unreasonable results.²⁵ The words contained in the statute provide us with the most reliable evidence of the legislature's intent. For example, the use of the term "shall" denotes a mandatory rather than permissive action.

A court should consider the plain meaning of the statute's words and their placement and purpose in the statutory scheme.²⁶ The primary goal of judicial interpretation of statute is to determine and implement the intent of the legislature.²⁷ The interpretation of the language of the statute must accord with the legislative intent.²⁸ When interpreting statutory language, courts must ascertain the legislative intent that may reasonably be inferred from the words in the statute.²⁹ Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of the statute. If the term is not defined in the statute, a court may consult a dictionary. Undefined words should be accorded their plain and ordinary meaning.³⁰ When reviewing a statute, all non-technical words and phrases shall be construed and understood according to the common usage of the language.³¹

The legislature is presumed to be aware of all existing statutes when enacting a new statute.³² Conflicting statutes should be construed if possible, to give each full force and effect.³³ Legislature enactments must be read as a whole so as to harmonize the meaning of their separate provisions; and, if possible, avoid the construction of one provision in such a manner as to negate another.³⁴ Statutes that appear to conflict should be read together and reconciled, if possible.³⁵ When two statutes lend themselves to an interpretation that avoids conflict, that interpretation should control.³⁶ The interpretation should give effect to each statute "without repugnancy, absurdity, or unreasonableness."³⁷ When two statutes conflict, the

²³ *Witherspoon v. Guilford*, 203 Mich. App. 240, 247; 511 NW 2d 720(1994).

²⁴ *Oakland Schools Bd of Ed v. Superintendent of Public Instruction*, 392 Mich 613, 619; 221 NW 2d 345(1974).

²⁵ *In the Matter of Karen Marable*, 90 Mich App. 7, 10; 282 NW 2d 221(1979), *lv den* 407 Mich. 871(1979).

²⁶ *Sun Valley Foods Co. v. Ward*, 460 Mich 230, 237(1999).

²⁷ *Mella* at 562.

²⁸ *Bush v. Shahahang*, 484 Mich 156, 167; 772 NW 2d 272(2009).

²⁹ *Koontz v. Ameritech Services, Inc.*, 466 Mich 304, 312; 645 NW 2d 34(2002).

³⁰ *Id.*

³¹ *Id.*

³² *Cameron v. Auto Club Ins. Ass'n*, 263 Mich App. 95, 98; 687 NW 2d 354(2004).

³³ *Beattie v. Mickalich*, 284 Mich App 564, 570; 773 NW 2d 748(2009).

³⁴ *Franges v. General Motors Corp.*, 404 Mich 590, 611; 274 NW 2d 392(1979); *Washtenaw County v. Saline River Intercounty Drainage Board*, 80 Mich App. 550, 555; 264 NW 2d 53(1978) *lv den* 402 Mich 944(1978).

³⁵ *World Book, Inc. v. Revenue Div.*, 459 Mich 403, 416; 590 NW 2d 293(1999).

³⁶ *Jackson Community College v. Dep't of Treasury*, 241 Mich App 673, 681; 621 NW 2d 707(2000).

³⁷ *Livonia Hotel, LLC v. Livonia*, 259 Mich App 116, 131; 673 NW 2d 763(2003), quoting *Michigan Humane Society v. Natural Resources Comm'n*, 158 Mich App 393; 404 N.W.2d 757(1987).

statute that is more specific to the subject matter prevails over the more general statute.³⁸

Statutes are *in pari materia* when they relate to the same subject matter and share a common purpose.³⁹ When statutes are *in pari materia*, they must be read together as one law even if they contain no reference to one another and were enacted on different dates.⁴⁰ The object of this *in pari materia* rule is to effectuate legislative purposes when statutes are harmonious.⁴¹ Statutes *in para materia* read together as a whole fully reveal the legislature's intent.⁴² When two statutes are *in pari materia* but conflict with another on a particular issue, the more specific statute must control over the more general statute.⁴³ A statute specific in language and enacted contemporaneously or subsequent to a general statute covering the same subject matter constitutes an exception to the general statute if there appears to be a conflict between them.⁴⁴

Finally, the doctrine of *expressio unius est exclusio alterius*, or inclusion by specific mention excludes what is not mentioned as it applies to statutory construction was recently discussed in the case of *Detroit City Council v. Detroit Mayor*, 283 Mich App 442 (2009). It has been described as a "rule of construction that is a product of logic and common sense."⁴⁵

The doctrine characterizes the general practice that "when people say one thing they do not mean something else." In *Detroit*, the mayor used his veto powers under the Home Rule City Act to veto the Detroit City Council's disapproval of transfer of authority over the Cobo Convention Center to the Detroit Regional Convention Facility Authority pursuant to the Regional Convention Facility Authority Act, in MCL 141.1351 *et. seq.*, which undermines council's action.

Detroit is instructive here because, much like this case, it concerns the juxtaposition of broad and specific statutes and differentiating powers of public officials when the legislature mentioned certain powers of an executive in a specific act, but did not mention certain other powers that the official exercised. In ruling that the Home Rule Act did not empower the mayor to use his general veto powers to override the final authority of city council to pass a resolution to disallow the transfer, the court reasoned, as follows:

The mayor answered that the Legislature did not intend to preclude the exercise of the mayoral veto power because it did not expressly do so. The mayor also relied on MCL 141.1359 of the act, where the

³⁸ *Livonia Hotel*, at 131.

³⁹ *In Re Estate of Kostin*, 278 Mich App 47, 58; 748 NW 2d 583(2008).

⁴⁰ *Aspey v. Memorial Hosp.*, 477 Mich 120, 129 n 4; 730 NW 2d 695(2007); *State Treasurer v. Schuster*, 456 Mich. 408, 417; 572 NW2d628(1998); *Jackson CC*, *supra* at 681.

⁴¹ *Walters v. Leech*, 279 Mich App. 707, 710; 761 NW 2d 143(2008).

⁴² *Beatrice*, *supra*.

⁴³ *In Re Estate of Kostin*, *supra*.

⁴⁴ *People v. Joseph*, 110 Mich App 465, 471; 313 NW 2d 340(1981).

⁴⁵ *Hoerstman Gen Contracting Inc. v. Hahn*, 474 Mich 66, 74; 711 NW 2d 340(2006).

Legislature expressly precluded the local legislative body from interfering with the local chief executive officer's power to appoint a board member to the Authority, to support his argument that the Legislature did not intend to preclude his exercise of a veto. The mayor argued that the legislative intent to allow a mayoral veto accords with the city's powers under the Home Rule City Act, MCL 117.1 *et seq.*

... The Circuit Court ruled that, under the plain language of the act, if the city Council rejects by resolution the transfer of authority, then the transfer does not occur. The circuit court relied on the doctrine of *expressio unius exclusio alterius*, or inclusion by specific mention excludes what is not mentioned. The court noted that the act mentioned certain powers of the local chief executive, but did not mention the veto power. The court concluded:

Thus, applying this maxim to the Act leads to the conclusion that the Legislature did not mean to provide the chief executive officer with the veto power over disapproval resolutions since, while the act delineates several duties or powers of the chief executive officer, none of these include the power to veto a disapproval resolution, and the act expressly confers on the legislative body alone the power to disapprove the transfer.

The court's process to statutory construction was again discussed in *Donkers, supra*:

The omission of a provision in one statute that is included in another statute should be construed as intentional, and any provision not included by the legislature may not be included by the courts.⁴⁶ Indeed, "[c]ourts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, applied what is not there."

THE STATUTES AT ISSUE

Mich. Const. 1963, art. VIII, § 2, titled "Free public elementary and secondary schools; discrimination; prohibition against use of public monies or property for nonpublic schools; transportation of students," reads as follows:

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color, or national origin.

⁴⁶ *Farrington v Total Petroleum, Inc.*, 442 Mich. 201, 210; 501 NW 2d 76(1993); *Polkton Charter Twp v. Pellegroni*, 265 Mich. App. 88, 103; 693 NW 2d 170(2005).

Both the Revised School Code and the Local Government Fiscal Responsibility Act contain provisions on operations of school districts; but each law has a different purpose. The preamble to the Revised School Code announces its purposes is to provide a system of education:

AN ACT to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts.

The Revised School Code is codified as MCL 380.1 to 380.1852. MCL 380.11a delineates the rights powers and duties of school boards. DPS is a general power school district and therefore is a body corporate and is governed by a school board. MCL 380.11a delineates the general powers of the board and provides in pertinent part:

(3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:

(a) Educating pupils. In addition to educating pupils in grades K-12, this function may include operation of preschool, lifelong education, adult education, community education, training, enrichment, and recreation programs for other persons.

(e) Receiving, accounting for, investing, or expending school district

money; borrowing money and pledging school district funds for repayment; and qualifying for state school aid and other public or private money from local, regional, state, or federal sources.

By comparison, the statute that created the office of EFM, the Local Government Fiscal Responsibility Act has a distinctively different purpose. It announces its purposes as follows:

An act to provide for review, management, planning, and control of the financial operations of units of local government, including school districts; to provide criteria to be used in determining the financial condition of a local government; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state boards, agencies, and officials, and officials and employees of units of local government; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency financial manager; to require the development of financial plans to regulate expenditures and investments by a local government in a state of financial emergency, to set forth conditions for termination of a local government financial emergency; and to repeal certain acts and parts of acts.

The legislature's reasons for the enactment are stated at section 141.1202, titled Legislative Determinations. It reads as follows:

The Legislature hereby determines that the public health and welfare of the citizens of this state would be adversely affected by the insolvency of units of local government, including certain school districts, and that the survival of units of local government is vitally necessary to the interests of the people of this state to provide necessary governmental services. The legislature further determines that it is vitally necessary to protect the credit of the state and its political subdivisions and that it is a valid public purpose for the state to take action and to assist a unit of local government in a fiscal emergency situation to remedy this emergency situation by requiring prudent fiscal management. The legislature, therefore, determines that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

The Local Government Fiscal Responsibility Act applies to all units of state government. The school district provisions begin at MCL 141.1231. The powers and duties of an emergency financial manager is proscribed beginning in MCL §141.1240.

The relevant provisions are found at MCL §141.1240:

- (1) In consultation with the school board, emergency financial manager shall develop and may from time to time a man, a

written financial plan for the school district. The financial plan shall provide for both of the following:

- (a) Conducting the operations of the school district within the resources available according to the emergency financial manager's revenue estimate.

- (2) After the initial development of the financial plan required by subsection (1), the emergency financial manager in consultation with the school board shall regularly reexamine the plan, and if the emergency financial manager reduces his or her revenue estimates, he or she shall modify the financial plan to conform to revised revenue estimates.

- (4) The emergency financial manager shall make public the plan or modified plan. This subsection shall not be construed to mean that the emergency financial manager must receive public approval before he or she implements the financial plan or any modification to the plan.

MCL §141.1241 lists the powers of the emergency financial manager:

- (1) Upon appointment under section 38, an emergency financial manager shall immediately assume control over all fiscal matters of, and make all fiscal decisions for, the school district for which he or she is appointed.
- (2) In implementing this article and performing his or her functions under this article, an emergency financial manager may take 1 or more of the following actions:

- (b) Review payrolls or other claims against the school district before payment.

- (c) Negotiate, renegotiate, approve, and enter into contracts on behalf of the school district.

- (d) Receive and disburse on behalf of the school district all federal, state, and local funds earmarked for the school district. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.

(e) Adopt a final budget for the next school fiscal year and amend any adopted budget of the school district.

(h) Require compliance with his or her orders, by court action if necessary.

(k) Consolidate divisions or transfer functions from 1 division to another division within the school district and appoint, supervise, and, at his or her discretion, remove, within legal limitations, heads of divisions of the school district.

(l) Create a new position or approve or disapprove the creation of any new position or the filling of a vacancy in a permanent position by an appointing authority.

(o) Reduce expenditures in the budget of the school district.

(s) Sell or otherwise use the assets of the school district to meet past or current obligations, provided the use of assets for this purpose does not impair the education of the pupils of the district.

(t) Exercise the authority and responsibilities affecting the financial condition of the school district that are prescribed by law to the school board and superintendent of the school district.

Defendant's position is that subparagraph (t) allows the EFM to do everything the school board has the authority to do. Defendant relies on this subsection to empower him to exercise the authority and responsibilities affecting the financial condition of the school district that are prescribed by law to the school board. Stating that "EFM by has developed and implemented academic initiatives designed to maximize receipt of federal and state grant funds to implement or prevent the loss of revenues for the district, defendant claimed these initiatives are well within the scope of his statutory authority because, while they are about academic policy, they affect the financial condition of the school district. (Supporting post-hearing brief, page 6.)

Tension rises between the provisions of the Code which grants the Board its

authority and the Act, which grants the EFM his authority when EFM issues decisions dictating academics and curriculum goals and education policy. There is no Michigan authority pertaining to the interpretation of these overlapping statutes, that are rendered ambiguous by their interaction. Therefore this decision is guided by principles of statutory construction. The statutes are *in pari materia*. In an emergency situation the two statutes merge to allow the best education possible within the resources available to the administrators of the system. It is clear there are two administrators because the Board was not suspended as the Legislature has done in the past. An EFM may be a czar with a great amount of authority but the position is not totally autocratic with unlimited authority. In the case at bar, each administrator has different responsibilities. It is the legislature's intent that the DPS Board and the DPS emergency financial manager perform a shared mission. Performing that duty requires a recognition of the statutory authority conferred upon both the board and the EFM by the legislature—one to restore fiscal and budgetary responsibility to a financially troubled school district—the other to determine educational goals-- the delivery of teaching services, curriculum, assessment testing, educational social policy and to communicate that effectively to the EFM to assist the EFM in making the decisions on how to selectively defray, financially prioritize and meet those goals within the revenues available.

The legislative intent is evidenced by the imposition upon the EFM of a legal duty to consult from time to time with the Board after the initial development of a written financial plan for the district because revenues and expenditures as well as cost are dynamic, not stagnant, changing with the enrollment as well as state aid and federal funding. The EFM's power to ameliorate or eliminate the district's financial problem is precisely to establish a sound fiscal and budgetary basis for operating a school district within the financial resources available to it. In this case that means the transfer of the authority of the school district to manage its financial affairs, not to relinquish its educational leadership, to a duly appointed emergency fiscal manager selected solely for his fiscal acumen and empowered specifically to resolve the district's financial problems. The system of education is not relegated to sound accounting practices. The Act does not marginalize the Board as an irrelevant entity. Instead, a harmonious reading of the statutes leads to the finding that the leadership and supervision over education still resides in the board. The Board has not been suspended as it was in previous legislative enactments. The Act has expressly given the Board a recognized role in times of a fiscal emergency by specific mention of the Board's role, not once, but several times in the statute.

To adopt the Defendant's reading would serve to negate the Board altogether and is not sound reasoning given the fact that the purpose and language of the Act is devoid of any reference to academics and affirmatively raises an expectation that the EFM be informed by the Board and assisted in his fiscal function by the board. Bobbs making of all academic, educational and social policy for DPS makes the Act's inclusive language provisions for the Board surplusage and runs afoul of the legislative intent. In fact the sole mention of the word "education" in the Act is in a limitation clause to eschew retiring debt to the detriment of education.

Notably, the legislature specifically delineated the Board's powers relating to fiscal matters in MCL 380.11a (3)(e), as opposed to academic matters, which are separately and distinctly delineated in MCL 380.11a(3)(a). Accordingly, Mr. Bobb's powers under MCL 141.1241(2)(t) are limited to those powers prescribed to the board under MCL 380.11a(3)(e) and do not include powers over academic matters which remain within the province of the board. The two statutes require Mr. Bobb and the board to share responsibilities, the first makes all the fiscal decisions and the latter makes all the decisions on how to educate pupils. Educating pupils includes the issues of school curriculum, hours of the school day, timing and content of examinations, and the individuals hired to teach at the schools.⁴⁷

Decisions to restore financial sustainability to the district can easily be made by using the Board's academic plan and simply identifying what can or cannot be paid for within the revenue resources of the district. The EFM chose to ignore the Board's plan completely. The Act is intended to prevent insolvency in the school district. The emergency concerns the support and maintenance of DPS, not the leadership and supervision of its education goals. Neither the Department of Education nor the Legislature has declared academic emergency.

Mr. Bobb's Master Facilities Plan, which he testified is informed by his academic plan and purports to create new campuses, eliminate certain existing schools and reconfigure education in accordance with the features dictated by particular facilities is *ultra vires*. As stated in the synopsis describing its purposes, the Act, requires the EFM to write a financial plan to regulate expenditures and investments. The Master Facilities Plan details which buildings are being used, closed, or kept open for schools and he obviously closed more schools as the revenue projections were reduced. However, this Court cannot recognize a power that the legislature clearly did not provide. Mr. Bobb cannot usurp the elected board's authority over academics and curriculum matters by creating his own academic system and programs under the guise of facilities or that his contract with the Governor required him to march forward in this way. He is not being sued by the Governor. The division of labor is still in place: Like the State Board of Education, it is the Board's charge to supervise public education and like the Legislatures job is to maintain and support, the EFM is imposed to run operations, to provide maintenance and support for the educational goals set by the Board with available revenues and to control spending in a responsible manner that is fiscally sound.

WRIT OF MANDAMUS

Bobb contends that the Board's mandamus claim fails due to the Board's failure to carry its burden to prove that the manner of consultation required of the

⁴⁷ Except to the extent stated at MCL 141.1241(2)(m).

EFM by law is a non-discretionary function which he did not already correctly perform and thereafter could not correctly perform by meeting with individual Board members. Defendant points out the Board minutes that reflect meetings with the EFM and one or some Board committee member on 5 different occasions; plus a public presentation on the 2009-2010 school budget. On those facts, defendant claims the consultation held with the Board as a quorum combined with the meetings with certain individual board members and a public presentation that the Board, like any member of the public was free to attend, suffice to satisfy any obligation that the Act imposes. Extending this reasoning, Defendant posits, from an initial premise that the Board, having no decision making or voting responsibility in the consultation component, that the EFM properly consults with the Board under the Act by contact with individual members and/or with a standing or advisory committee. Plaintiff disagrees and states it must comply with the Open Meetings Act.⁴⁸

Defendant's most cogent argument is that the manner of consultation is discretionary. Defendant takes aim at the supposition that consultation with the board must be conducted in accordance with the Open Meeting Act and requires a regular monthly meeting and a quorum. Defendant reasons that simply because the Board must exercise its statutory obligation in open public meetings that its participation in consultation with defendant requires no action on its part and is merely ancillary to Mr. Bobb's statutory duties, which involve the guidelines of the Act, not the Code. The EFM posits that there is more left to the imagination, and there is not enough precision and certainty in the Act to leave nothing to the exercise of discretion or judgment. Defendant prays that plaintiffs' request be denied, claiming to issue a writ of mandamus would be to impose a level of detail not contemplated by the Act. Defendant maintains that there is no clear legal duty in the Act mandating with precision and certainty how the defendant must consult with the Board such that nothing is left to his discretion or judgment. Defendant further maintains that how often the EFM consults with the Board is also at his discretion.

Defendant cites *Flinn City Council v. Michigan*, 253 Mich. App. 378(2002) where the Court of Appeals held that although the relevant statute in that case required a hearing, the act did not specify what kind of hearing was required. The court reasoned that because the legislature did not specify what the hearing must entail, the scope and nature of the hearing was left to the governor's discretion. The Court of Appeals further held that the circuit court did not have authority to dictate the procedure to be utilized in connection with the hearing. Similarly, defendant reasons in this case that the Act requires consultation but does not define what consultation means. And just as in *Flinn City Council*, the parameters of the undefined duty should be left to the person responsible for fulfilling his duty, specifically, the EFM, Mr. Bobb. Therefore, defendant reasons that mandamus is inappropriate because there is no clear legal duty nor is there a clear legal right to perform in as specific a manner as the Board seeks.

⁴⁸ (See Board President's letter dated August 19, 2009, P's Ex. 3.)

Black's law dictionary defines mandamus as a "writ issued by a court to compel a government officer to perform a mandatory or purely ministerial duty correctly." Michigan appellate courts have repeatedly held that mandamus is an extraordinary remedy that is only available where there is a legal duty incumbent upon a public official, the person(s) seeking the mandamus has a clear right to the discharge of such duty, and the person seeking the mandamus has no alternative remedy available.⁴⁹ This means that although a trial court's decision regarding a writ of mandamus is discretionary,⁵⁰ a writ of mandamus may only be granted where a plaintiff has a clear legal right to the performance of a specific duty sought to be compelled and the defendant has a clear legal duty to perform the requested acts.⁵¹

A "clear legal duty," is ministerial: When considering mandamus, there is a distinction between ministerial and discretionary action. If the act requested by the plaintiff involves judgment or the exercise of discretion, a writ of mandamus is inappropriate.⁵² Ministerial acts are those defined by law with such precision as to leave nothing to discretion.⁵³ The party seeking mandamus relief has the burden to prove that the specific act sought to be compelled is a ministerial act to which they have a clear legal right to have defendant perform because defendant has a clear legal duty to perform the specific act.⁵⁴

Although the act must be ministerial, i.e. involves no exercise of discretion or judgment, again, "where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment," a writ of mandamus can also be sought when the official refuses to exercise their discretion at all. In such instances a writ is issued to compel the official to proceed to exercise their discretion.⁵⁵ Mandamus is, however, an inappropriate tool to use to control a public official's exercise of discretion and is properly granted when for all practical purposes, there is no other remedy.⁵⁶

In addition, in proving entitlement to a writ of mandamus a party also must be without an adequate legal or equitable remedy that might achieve the same result.⁵⁷ Where the statutes provide no guidance concerning the procedures to follow, the court rules governing such matters are applicable.⁵⁸

The EFM has a clear duty to regularly reexamine the written financial plan. The Act has specifically and clearly stated that regular reexamination must be done for the operation of the school district within its resources according to the EFM's

⁴⁹ *Warber v. Moore*, 126 Mich. App. 770, 775-776(1983).

⁵⁰ *Casco Twp. v. Secretary of State*, 472 Mich. 566, 571; 701 NW 2d 102(2005). *White-Bey v. Dep't of Corrections*, 239 Mich App 221, 223-224; 608 NW 2d 833(1999).

⁵¹ *University Medical Affiliates, PC v. Wayne County Executive*, 142 Mich App. 135, 1412(1985); *Wayne County v. State Treasurer*, 105 Mich. App. 249, 251(1981).

⁵² *Lickfeldt v. Dep't of Corrections*, 247 Mich. App. 299, 302; 636 NW 2d 272(2001).

⁵³ *Ottawa Clerk v. Ottawa Co. Bd*, 145 Mich. App. 502, 506(1985).

⁵⁴ *University Medical Affiliates*, *supra*, at 142.

⁵⁵ *Warber*, *supra*.

⁵⁶ *Genesis Center, PLC v. Comm'r of Financial and Ins. Servs.*, 246 Mich. App. 531(2001).

⁵⁷ *Lickfeldt*, *supra*; *Keaton v. Beverly Hills*, 202 Mich. App. 681(1993).

⁵⁸ MCR 3.305.

revenue estimate; attendant to that duty is a requirement under Sec. 141.1240 (2) of the Act that the legal duty be carried out in consultation with the Board upon reexamination of the plan. Discussions with individual board members do not discharge that duty.

With reference to the Board's first request for relief, the sole responsibility under the LGFRA for the development of a written financial plan for the District rests with the EFM. However, he does under Sec. 40 of the Act have a legal duty to consult from time to time with the Board on a plan. Discussions with individual board members do not discharge that duty.

While the business that the board of a school district is authorized to perform must be conducted at a public meeting of the Board held in compliance with the Open Meetings Act⁵⁹, an individual acting in his official capacity is not a "public body" for the purposes of the OMA. The Michigan Supreme Court determined that a city manager was not obligated to follow the OMA because he was not a "public body" within the meaning of that term.⁶⁰ The Court stated that the term "public body" connotes a collective entity and that a single individual is not generally recognized as a "board," "commission," "committee," subcommittee," "authority," or "council," terms that the legislature uses to describe "public body."⁶¹ The Court noted that the legislature could have included individuals in its definition of "public body" in the OMA, just as it did in its definition of "public body" for the purposes of the Freedom of Information Act.⁶² The Court further recognized the infeasibility of requiring an individual to deliberate in an open meeting pursuant to MCL 15.263(3).⁶³

This Court agrees that the manner of consultation required of the EFM by law is a discretionary function, however the action of consultation is mandated in two ways: There is a clear duty to conduct a consultation with the Board upon the development of the initial written plan and again whenever there is a reexamination of the financial plan. Mr. Bobb clearly admitted that he not only failed but simply refused to perform his clear legal duty to consult with the Board any time after August 17, 2009, the date of this lawsuit; and while Mr. Bobb does not have to abide by the OMA, since the consultation must be with the Board, certainly the Board must act in compliance with the OMA in carrying out its duty under both the Code and the Act. That includes all decisions and all deliberations of the Board with a quorum of its members. Consultations between the EFM and the Board may or may not, by necessity implicate decisions or deliberations of the Board. It is clear that on the issue of consultation the Act is unambiguous. The word "shall" signals a

⁵⁹ *Craig v. Detroit Pub. Sch. Chief Exec. Officer*, 265 Mich. App. 572(2005); §380.1201. The business that the board of a school district is authorized to perform shall be conducted at a public meeting of the board held in compliance with the open meetings act. 1976 PA 267, MCL 15.261 to 15.275. An act of the board is not valid unless the act is authorized at a meeting by a majority vote of the members elected or appointed to and serving on the board and a proper record is made of the vote.

⁶⁰ *Herald Co. v. Bay City*, 463 Mich 111, 131; 614 NW 2d 873(2000).

⁶¹ *Id* at 129-130.

⁶² *Id* at 130 n 11.

⁶³ *Id* at 131. MCL 380.120(1).

requirement that Mr. Bobb must engage in the act of consultation with the Board, and in doing so must reexamine the financial plan regularly. The clear duty of the EFM is to regularly reexamine the written financial plan. The Act has specifically stated that regular reexamination is done that provides for conducting the operation of the school district within its resources according to the EFM revenue estimate.

Mr. Bobb readily admits that once the lawsuit was initiated he failed to consult at all with the Board in any manner. And the fact that the revenue estimates have changed and Mr. Bobb has changed the financial plan in response to those vacillations are judicially noticed under MRE 201(b) as those events are a matter of common knowledge, public record and capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Accordingly, the first two requirements for issuing a writ of mandamus are met, as the Board has a legal right to have Mr. Bobb consult with it and Mr. Bobb has a clear legal duty to regularly re-examine the financial plan in consultation with the Board. Further, the act of consulting itself with the board is ministerial in nature. The act of consultation itself does not involve exercise of discretion- engaging in an act of consultation is ministerial and Bobb did not have discretion not to consult when he reexamined the financial plan, which he did effectively every time he amended the facilities plan. Notably while the manner of consultation is not ministerial Mr. Bobb admits that after August 9, 2009, he simply refused to do his duty.

Finally, it does not appear that the board has any other adequate legal or equitable remedy when Mr. Bobb fails to consult with the board as he re-examines the financial plan and reduces the revenue estimate: This is implicit in his amendment to the facilities plan. It is obvious the written financial plan changed with the fluctuations from a projected 100 school closures then the actualized 42 school closures at the time of the hearings to the eventual 57 school closures that exist to date. It is clear that the EFM was regularly reexamining the financial plan by the vacillating closures: It is equally clear that he failed to perform his duty to consult when he ignored the Board while amending the closure orders. Defendant has argued successfully in this action that the school closures are done "to save the district money in the future." Consequently, the EFM cannot contradict himself when defending against plaintiffs' request for a writ by claiming the facilities plan is not an amendment to the written financial plan. That argument belies defendant's own theory on the "impairs education" claim, *supra*. Logic dictates that the revenues estimates were reexamined and changed with every amendment to the closure list and the EFM clearly did not consult with the Board in consideration of anything and certainly not in consideration of assessment testing, deficit teaching policy, ending social policy or closures. Mr. Bobb conflated his freedom to implement his changes and make those amendments public with a right he was not given in the statute, viz the right to regularly reexamine without engaging in consultation with the Board. In so doing he violated a clear legal duty. Except to order Mr. Bobb to do his duty, there is no other adequate legal remedy.

Mandamus relief is also warranted on the counter complaint, however the issue is moot: EFM Bobb seeks an order compelling the Board to comply with his

executive orders or to invalidate Board actions inconsistent with such orders. Section 39 of the LGFRA, provides:

Sec. 39. The emergency financial manager shall issue to the appropriate officials or employees of the school district the orders that he or she considers necessary to accomplish the purposes of this article, including, but not limited to, orders for the timely and satisfactory implementation of a financial plan developed pursuant to section 40. An order issued under this section is binding on the school district officials or employees to whom it is issued. MCL 141.1239

The Board had a clear legal duty to comply with orders issued by the EFM. The Board clearly violated the statute in re-titling Teresa Gueyser's position under these sections and MCL 141.1241(l) and (n), MCL 141.1241(2)(k), and this section:

Sec. 43. The superintendent of public instruction; the department of education; and the school board, administrators, and employees of a school district that has a financial emergency shall provide the assistance and information considered necessary and requested by the emergency financial manager in the effectuation of his or her powers and duties under this article. The school board shall comply with orders issued by the emergency financial manager and may take those actions necessary to comply with this article and as may be prescribed by the review team, the superintendent of public instruction, or the emergency financial manager in implementing this article. MCL 141.1243

However, while the defendant has similarly met his burden of proof on the elements of clear legal duty, Ms. Gueyser's departure from DPS makes the issue moot.

DECLARATORY JUDGMENT

MCR 2.605 governs declaratory judgments. A suit for a declaratory judgment asks the court to render judgment on a legal question, allowing the parties with an actual controversy to obtain an adjudication of their rights before the actual losses or

injuries occur.⁶⁴ An actual controversy exists when a declaratory ruling is needed to guide a plaintiff's future conduct in order to preserve legal rights.⁶⁵ An actual controversy is necessary to give the court subject matter jurisdiction to enter declaratory judgment.⁶⁶ The plaintiff seeking declaratory judgment must have standing: the plaintiff must have suffered an injury in fact, an invasion of a legally protected interest that is concrete and particularized and actual and imminent (but not hypothetical or conjectural); there must be a causal connection between the injury and the conduct complained of; and it must be likely that the injury will be redressed by a favorable decision.⁶⁷

Plaintiff has met its burden of proof to receive declaratory judgment on this evidentiary record. As noted in this Court's opinion issued in this case dated May 5, 2010, and/or as stated, *supra and infra* here, the Board was given the right, power and duty to set the academic, educational and social policy goals for DPS and the decision concerning those matters continues to reside with the Board in a financial emergency where an emergency financial manager is in charge of fiscal operations for the school district. The timing and the content of assessment testing is an issue of public education, which is a responsibility of the Board.⁶⁸ In a financial emergency, an EFM for a school district has no leadership and supervisory statutory authority over educational goals and methods of approach and attainment except to decide for the school board all its operational, funding and budget defrayments. An EFM is an accounting officer—there to carry out the legislative function of support and maintenance; and EFM is not imposed to carry out the leadership and supervisory function of the Board of education; that power still remains with the Board. The discipline of democracy dictates that the transfer of power is a peacefully transferred through the dynamics of Congress. It is the function of this Court to determine existing rights and clearly there is no provision in the Act that bestowed academic or educational authority on the EFM. Accordingly, plaintiff is entitled declaratory judgment that academic authority is reposed in the Board.

PERMANENT INJUNCTIVE RELIEF

Defendant points out that the Board, again, did not brief this Court on the law for injunctive relief. Generally, the same considerations for preliminary injunctions apply to permanent injunctions. It is an extraordinary measure granted when there is no adequate remedy at law and there is a real and imminent danger of irreparable

⁶⁴ *Detroit Base Coalition for Human Rights of Handicapped v. Direct...*, 431 Mich. 172(1988).

⁶⁵ *Associated Builders & Contractors v. Wilbur*, 472 Mich. 117(2005).

⁶⁶ *Genesis Center, PLC v. Comm'r of Financial and Ins. Servc.*, 246 Mich App 531(2001).

⁶⁷ *Lee v. Macomb County Bd of Comm'rs*, 464 Mich. 726(2001).

⁶⁸ 67B Am Jur 2d, Schools, §349, p. 628.

injury.⁶⁹

For a preliminary injunction there is a 4 factor analysis: the likelihood that the party seeking the injunction will prevail, the danger of irreparable injury to the party seeking the injunction if it is not issued; the risk that the party seeking the injunction will be harmed more by its absence than the opposing party will be harmed by its issuance; and the harm to the public interest if it is granted.⁷⁰ Also, a permanent injunction should not be granted if its enforcement would be too difficult or if it is ineffectual.⁷¹

Once a judge has considered an application for an injunction, she may reconsider the same matter or another injunction for the same purpose on any subsequent request. This is true whether the original request for an injunction was granted in whole or in part, or whether an injunction was granted conditionally or on terms.⁷²

In cases dealing with injunctive relief, courts restate the general rule of irreparable harm.⁷³ Irreparable harm is simply an injury for which there is no legal amount of damages or for which damages cannot be determined with a sufficient degree of certainty.⁷⁴ Economic injuries are not irreparable because they can be remedied by damages at law, however the loss of consumer goodwill and weakened ability to fairly compete that will result from disclosure of trade secrets and breach of noncompetition agreement have been held to establish irreparable injury.⁷⁵

MCR 3.310(C), *et seq* requires that an order for an injunction must have each of the following: the reason for its issuance; its terms; in reasonable detail, the acts restrained (without reference to the complaint or other document); a statement that it is binding on the parties to the action, their officers, agents, servants, employees, and attorneys and on those persons in active concert or participation with them who received actual notice of the order by personal service or otherwise; if security is not required, the reason must be stated. Under MCR 3.310(D)(2), security is not required of a Michigan county or municipal corporation or its officer or agency acting in an official capacity.

An injunction must be an all-inclusive, self-explanatory instrument- it must state the reason for its issuance, be specific in its terms and describe in reasonable detail the acts sought to be restrained. The purpose of these requirements is to enable the person served with the injunction to determine its purpose and the acts proscribed without having to refer to other documents, such as court pleadings, that

⁶⁹ See *Acer Paradise, Inc. v. Kalkaska County Rd Comm'n*, 262 Mich App 193, 684 NW 2d 903(2004).

⁷⁰ *Alliance for Mentally Ill v. Department of Community Health*, 231 Mich. App. 647(1998).

⁷¹ *Three Lakes Assn v. Kessler*, 91 Mich. App. 371(1979).

⁷² MCR 3.310(G)(1).

⁷³ *Head v. Phillips Camper Sales & Rental*, 234 Mich App 94, 593 NW 2d 595(1999).

⁷⁴ *Thermatool Corp. v. Borzymi*, 227 Mich. App. 366(1998).

⁷⁵ *Lowry Computer Prods. v. Head*, 984 F. Supp 1111(ED Mich. 1997).

the person may not possess.⁷⁶

An injunction is binding the parties to the action on their officers agents, servants, employees and attorneys and on those persons in active concert or participation with them received actual notice of the order by personal service or otherwise. MCR 3.310(C)(4). The court may enjoin those in privity with a party.⁷⁷

A person not named in the injunction nor included within the description listed in MCR 3.310(c)(4) is not bound by the injunction.⁷⁸ However, a person who is not a party to the suit but who had notice of the injunction because he/she was served of a copy of it risk contempt proceedings if he or she helps a party violate it.⁷⁹

An injunction may not be vacated except by direct appeal and appeal of an allegedly improper injunctive order does not automatically stay enforcement of it. After an appeal is taken from an injunction, the court that issued it has the power to punish those who disobey it in a contempt proceeding.

The rulings *supra* detail the reasons the Board succeeded on the merits in its major requests for mandamus and declaratory relief. Therefore, the remaining elements for injunctive relief of irreparable harm, balancing the harm, and no adequate remedy are addressed here.

Robert Bobb put on the identity of DPS to the exclusion of the Board. He rendered the elected Board a nullity existing in name only, yet totally disempowered to effectuate any decisions the electorate authorized it to make; and recently without a secretary to record its history, as if it has been erased not only from any and all relevance but from all embodiment. What flows from his fiscal decisions is the complete frustration of the Boards' ability or capacity to carry out its official duty. This is irreparable harm. He was empowered to figure out how to pay for education fashioned by the Board. Instead he created education products he proposed to implement. His business paradigm envisions competitive marketplace schools where parents shop like consumers for the best schools with best being dictated by survival of the fittest principles of *caveat emptor*. Dr. Lipman warned that this competitive business approach to teaching and learning is shortsighted because competition among teachers and schools kills sharing pathways to successful teaching methods for educational professionals and consequently decimates widespread learning across the district. Schools will compete for the best students leaving less gifted children or those that come from households that somehow fail to present their children to school in the optimal ready-to-learn state, may fall by the wayside. Only schools with the best teachers will thrive and without encouragement to foster cooperation among and between teachers and schools the weak perish. While the current governance structure has not succeeded in quality control, academics or finances, the unauthorized EFM's vision is uninformed by the lack of

⁷⁶ Lang, Kathleen A., Neilson, Hon. Susan Bieke, Young Jr., Hon. Robert P., Holsinger, Kay, *Michigan Civil Procedure*, 2009/2010, Vol I, §5.15.

⁷⁷ *Sun Oil v. Trent Auto Wash, Inc.*, 379 Mich 182, 150 NW 2d 818(1967).

⁷⁸ *Walters v. Norlin*, 123 Mich App 435, 332 NW 2d 569(1983).

⁷⁹ *DeKuyper v. DeKuyper*, 365 Mich 487, 113 NW 2d 804(1962).

education expertise leaving it subject to criticism as a short sighted business patch, short on teaching and learning wisdom, a short term fix where some stand to profit shielded to some extent from the eye of public oversight of competitive bids.

This is the vision that emanates from a person who had to be chosen solely based on his finance credentials and who has no teaching certificate, training or experience, no education or counseling background; all his study in education has emanated from unvetted sources, who may stand to benefit financially should his academic plans come to fruition and who have supplemented his pay.⁸⁰ He hired Barbara Byrd Bennett as an education expert, who answers to the title 'Doctor' but admits that her degree is merely honorary. Issuing the injunction will result in far less harm to the EFM and his staff because they have already implemented the school closures. On balance, the Board and Detroiters who have had no enforceable say in school governance, particularly education, since March 2009, will be particularly harmed if the marketplace school experiment is foisted on children and teachers without the sanction of the statutorily responsible entity making that decision. The public interest is best served by allowing the legislature to clearly grant an EFM academic authority *vis à vis* sanctioning the exercise of punishing power of the purse as a sword instead of a shield for education, teaching and children. There is no adequate remedy for being prevented from performing a statutory duty.

There is no need for security for this injunctive relief where both parties are public officials.


Circuit Court Judge

⁸⁰ See Coalition To Defend Affirmative Action et al. v Robert Robb, Wayne County Third Circuit Court Case No. 10-002944 CZ Op. & Order dated July 29, 2010.

EXHIBIT 10

Act No. 4

Public Acts of 2011

Approved by the Governor

March 16, 2011

Filed with the Secretary of State

March 16, 2011

EFFECTIVE DATE: March 16, 2011

STATE OF MICHIGAN

96TH LEGISLATURE

REGULAR SESSION OF 2011

Introduced by Rep. Pscholka

ENROLLED HOUSE BILL No. 4214

AN ACT to safeguard and assure the fiscal accountability of units of local government, including school districts; to preserve the capacity of units of local government to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of units of local government and the provision of services by units of local government, including school districts; to provide criteria to be used in determining the financial condition of units of local government, including school districts; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state departments, boards, agencies, officials, and employees, and officials and employees of units of local government, including school districts; to provide for placing units of local government, including school districts, into receivership; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager; to require the development of financial and operational plans to regulate expenditures, investments, and the provision of services by units of local government, including school districts, in a state of financial stress or financial emergency; to provide for the modification or termination of contracts under certain circumstances; to set forth the conditions for termination of a local government financial emergency; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "local government and school district fiscal accountability act".

Sec. 3. The legislature hereby determines that the health, safety, and welfare of the citizens of this state would be materially and adversely affected by the insolvency of local governments and that the fiscal accountability of local governments is vitally necessary to the interests of the citizens of this state to assure the provision of necessary governmental services essential to public health, safety, and welfare. The legislature further determines that it is vitally necessary to protect the credit of this state and its political subdivisions and that it is necessary for the public good and it is a valid public purpose for this state to take action and to assist a local government in a condition of financial stress or financial emergency so as to remedy the stress or emergency by requiring prudent fiscal management and efficient provision of services, permitting the restructuring of contractual obligations, and prescribing the powers and duties of state and local government officials and emergency managers. The legislature, therefore, determines that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Sec. 5. As used in this act:

(a) "Chief administrative officer" means any of the following:

(i) The manager of a village or, if a village does not employ a manager, the president of the village.

(ii) The city manager of a city or, if a city does not employ a city manager, the mayor of the city.

(iii) The manager of a township or the manager or superintendent of a charter township, or if the township does not employ a manager or superintendent, the supervisor of the township.

(iv) The elected county executive or appointed county manager of a county; or if the county has not adopted the provisions of either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL 45.501 to 45.521, the county's chairperson of the county board of commissioners.

(v) The chief operating officer of an authority or of a public utility owned by a city, village, township, or county.

(vi) The superintendent of a school district.

(b) "Emergency manager" or "manager" means the emergency manager appointed under section 15. An emergency manager includes an emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72.

(c) "Entity" means a partnership, nonprofit or business corporation, limited liability company, labor organization, or any other association, corporation, trust, or other legal entity.

(d) "Financial and operating plan" means a written financial and operating plan for a local government under section 18, including an academic and educational plan for a school district.

(e) "Local government" means a municipal government or a school district.

(f) "Local inspector" means a certified forensic accountant, certified public accountant, attorney,

or similarly credentialed person whose responsibility it is to determine the existence of proper internal and management controls, fraud, criminal activity, or any other accounting or management deficiencies.

(g) "Municipal government" means a city, a village, a township, a charter township, a county, an authority established by law, or a public utility owned by a city, village, township, or county.

(h) "Review team" means a review team designated under section 12.

(i) "School board" means the governing body of a school district.

(j) "School district" means a school district as that term is defined in section 6 of the revised school code, 1976 PA 451, MCL 380.6, or an intermediate school district as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(k) "State financial authority" means the following:

(i) For a municipal government, the state treasurer.

(ii) For a school district, the superintendent of public instruction.

Sec. 12. (1) The state financial authority of a local government may conduct a preliminary review to determine the existence of a local government financial problem if 1 or more of the following occur:

(a) The governing body or the chief administrative officer of a local government requests a preliminary review under this act. The request shall be in writing and shall identify the existing or anticipated financial conditions or events that make the request necessary.

(b) The state financial authority receives a written request from a creditor with an undisputed claim that remains unpaid 6 months after its due date against the local government that exceeds the greater of \$10,000.00 or 1% of the annual general fund budget of the local government, provided that the creditor notifies the local government in writing at least 30 days before his or her request to the state financial authority of his or her intention to submit a written request under this subdivision.

(c) The state financial authority receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the local government's jurisdiction equal to not less than 5% of the total vote cast for all candidates for governor within the local government's jurisdiction at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the local government.

(d) The state financial authority receives written notification that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.

(e) The state financial authority receives written notification that the local government has failed

for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(f) The state financial authority receives written notification from a trustee, paying agent, bondholder, or auditor engaged by the local government of a default in a bond or note payment or a violation of 1 or more bond or note covenants.

(g) The state financial authority of a local government receives a resolution from either the senate or the house of representatives requesting a preliminary review under this section.

(h) The local government has violated a requirement of, or a condition of an order issued pursuant to, former 1943 PA 202, the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.

(i) A municipal government has violated the conditions of an order issued by the local emergency financial assistance loan board pursuant to the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(j) The local government has violated a requirement of sections 17 to 20 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.437 to 141.440.

(k) The local government fails to timely file an annual financial report or audit that conforms with the minimum procedures and standards of the state financial authority and is required for local governments under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55. In addition, if the local government is a school district, the school district fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the superintendent of public instruction and is required under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and 1979 PA 94, MCL 388.1601 to 388.1772.

(l) A municipal government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.

(m) A local government is in breach of its obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(n) A court has ordered an additional tax levy without the prior approval of the governing body of the local government.

(o) A municipal government has ended a fiscal year in a deficit condition as defined in section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921, or has failed to comply with the requirements of that section for filing or instituting a financial plan to correct the deficit condition.

(p) A school district ended its most recently completed fiscal year with a deficit in 1 or more of

its funds and the school district has not submitted a deficit elimination plan to the state financial authority within 30 days after the district's deadline for submission of its annual financial statement.

(q) A local government has been assigned a long-term debt rating within or below the BBB category or its equivalent by 1 or more nationally recognized credit rating agencies.

(r) The existence of other facts or circumstances that in the state treasurer's sole discretion for a municipal government are indicative of municipal financial stress, or, that in the superintendent of public instruction's sole discretion for a school district are indicative of school district financial stress.

(2) If the state financial authority determines that a preliminary review is appropriate under this section, before commencing the preliminary review the state financial authority shall give the local government specific written notification of the review. The preliminary review shall be completed within 30 days following its commencement. Elected and appointed officials of a local government shall promptly and fully provide the assistance and information requested by the state financial authority for that local government in conducting the preliminary review.

(3) If a finding of probable financial stress is made for a municipal government under subsection (2), the governor shall appoint a review team for that municipal government consisting of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a municipal financial management review.

(4) If a finding of probable financial stress is made for a school district under subsection (2), the governor shall appoint a review team for that school district consisting of the state treasurer or his or her designee, the superintendent of public instruction or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a school district financial management review.

(5) The department of treasury shall provide staff support to each review team.

(6) A review team appointed under former 1988 PA 101 or former 1990 PA 72 and serving on the effective date of this act shall continue under this act to fulfill their powers and duties. All proceedings and actions taken by the governor, the state treasurer, or a review team under former 1988 PA 101 or former 1990 PA 72 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former 1988 PA 101 or former 1990 PA 72 is ratified and is binding and enforceable under this act.

Sec. 13. (1) The review team shall have full power in its review to perform all of the following functions:

(a) Examine the books and records of the local government.

(b) Utilize the services of other state agencies and employees.

(c) Negotiate and sign a consent agreement with the chief administrative officer of the local government. The consent agreement may provide for remedial measures considered necessary to address the local financial problem and provide for the financial stability of the local government and may include either a continuing operations plan or recovery plan as described in section 14a. The consent agreement may utilize state financial management and technical assistance as necessary in order to alleviate the local financial problem. The consent agreement shall also provide for periodic financial status reports to the state financial authority. In order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state financial authority. A consent agreement shall provide that in the event of a material uncured breach of the consent agreement, the state treasurer is authorized to place the local government in receivership as provided under section 15.

(2) The review team shall meet with the local government as part of its review. At this meeting, the review team shall receive, discuss, and consider information provided by the local government concerning the financial condition of the local government.

(3) The review team shall report its findings to the governor, with a copy to the state financial authority, within 60 days following the appointment of the review team under section 12 or earlier if required by the governor. Upon request, the governor may grant one 30-day extension of this 60-day time limit. A copy of the report shall be forwarded by the state treasurer to the chief administrative officer and the governing body of the local government, the speaker of the house of representatives, the senate majority leader, and the superintendent of public instruction if the local government is a school district. The report shall include the existence, or an indication of the likely occurrence, of any of the following:

(a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.

(b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:

(i) Taxes withheld on the income of employees.

(ii) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.

(iii) Any contribution required by a pension, retirement, or benefit plan.

(c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(d) The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.

(e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.

(f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 5% of the budgeted revenues for the general fund.

(g) Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(h) Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope.

(i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.

(j) Existence of a structural operating deficit.

(k) Use of restricted revenues for purposes not authorized by law.

(l) Any other facts and circumstances indicative of local government financial stress or financial emergency.

(4) The review team shall include 1 of the following conclusions in its report:

(a) The local government is not in financial stress or is in a condition of mild financial stress as provided in section 14.

(b) The local government is in a condition of severe financial stress as provided in section 14, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to subsection (1)(c).

(c) The local government is in a condition of severe financial stress as provided in section 14, and a consent agreement has not been adopted pursuant to subsection (1)(c).

(d) A financial emergency exists as provided in section 14 and no satisfactory plan exists to resolve the emergency.

(5) The review team may, with the approval of the state financial authority, appoint an individual or firm to carry out the review and submit a report to the review team for approval. The department of treasury may enter into a contract with the individual or firm respecting the terms and conditions of the appointment.

Sec. 14. (1) For purposes of this act, a local government is considered to be in a condition of no financial stress or mild financial stress if the report required in section 13 concludes that none of the factors in section 13(3) exist or are likely to occur within the current or next succeeding fiscal year or, if they occur, do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.

(2) For purposes of this act, a local government is considered to be in a condition of severe financial stress if either of the following occurs:

(a) The report required in section 13 concludes that 1 or more of the factors in section 13(3) exist or are likely to occur within the current or next succeeding fiscal year and, if left unaddressed, may threaten the local government's future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(b) The chief administrative officer of the local government recommends that the local government be considered in severe financial stress.

(3) For purposes of this act, a local government is considered to be in a condition of financial emergency if any of the following occur:

(a) The report required in section 13 concludes that 2 or more of the factors in section 13(3) exist or are likely to occur within the current fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(b) The local government has failed to provide timely and accurate information enabling the review team to complete its report under section 13.

(c) The local government has failed to comply in all material respects with a continuing operations plan or recovery plan, as provided in section 14a, or with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(d) The local government is in material breach of a consent agreement entered into under section 13(1)(c).

(e) The local government is in a condition of severe financial stress as provided in subsection (2), and a consent agreement has not been adopted pursuant to section 13(1)(c).

(f) The chief administrative officer of the local government, based upon the existence or likely occurrence of 1 or more of the factors in section 13(3), recommends that a financial emergency be declared and the state treasurer concurs with the recommendation.

Sec. 14a. (1) A consent agreement as provided in section 13(1)(c) may require a continuing operations plan or a recovery plan if required by the state financial authority.

(2) If the state treasurer requires that a consent agreement include a continuing operations plan, the local government shall prepare and file the continuing operations plan with the state treasurer as provided for in the consent agreement. The state financial authority shall approve or reject the

initial continuing operations plan within 14 days of receiving it from the local government. If a plan is rejected, the local government shall refile an amended plan within 30 days of the rejection addressing any concerns raised by the state financial authority. If the amended plan is rejected, then the local government is considered to be in material breach of the consent agreement. The local government is required to file annual updates to its continuing operations plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the continuing operations plan remains in effect.

(3) The continuing operations plan shall be in a form prescribed by the state financial authority, but shall, at a minimum, include all of the following:

(a) A detailed projected budget of revenues and expenditures over not less than 3 fiscal years which demonstrates that the local government's expenditures will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.

(b) A cash flow projection for the budget period.

(c) An operating plan for the budget period that assures fiscal accountability for the local government.

(d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.

(e) An evaluation of the costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed within the budget period.

(f) A provision for submitting quarterly compliance reports to the state financial authority demonstrating compliance with the continuing operations plan.

(4) If a continuing operations plan is approved for a municipal government, the municipal government shall amend the budget and general appropriations ordinance adopted by the municipal government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. If a continuing operations plan is approved for a school district, the school district shall amend the budget adopted by the school district under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. The chief administrative officer, the chief financial officer, the governing body, and other officials of the local government shall take and direct such actions as may be necessary or advisable to maintain the local government's operations in compliance with the continuing operations plan.

(5) If the state financial authority requires that a consent agreement include a recovery plan, the state financial authority shall develop and adopt, in consultation with the review team if desired by the state financial authority, a recovery plan. If a recovery plan is developed and adopted for the local government, the local government thereafter is required to file annual updates to its recovery plan. The annual updates shall be included with the annual filing of the local

government's audit report with the state financial authority as long as the recovery plan remains in effect.

(6) A recovery plan may include terms and provisions as may be approved in the discretion of the state treasurer, including, but not limited to, any 1 or more of the following:

(a) A detailed projected budget of revenues and expenditures over not less than 3 fiscal years which demonstrates that the local government's expenditures will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.

(b) A cash flow projection for the budget period.

(c) An operating plan for the budget period that assures fiscal accountability for the local government.

(d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.

(e) An evaluation of costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations.

(f) Procedures for cash control and cash management, including, but not limited to, procedures for timely collection, securing, depositing, balancing, and expending of cash, and may include the designation of appropriate fiduciaries.

(g) A provision for submitting quarterly compliance reports to the state financial authority and the chief administrative officer of the local government that demonstrates compliance with the recovery plan.

(7) The recovery plan may include the appointment of a local auditor or local inspector, or both, in accordance with section 19(1)(p).

(8) If a recovery plan is developed and adopted by the state financial authority for a local government, the recovery plan shall supersede the budget and general appropriations ordinance adopted by the local government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general appropriations ordinance is considered amended to the extent necessary or advisable to give full effect to the recovery plan. In the event of any inconsistency between the recovery plan and the budget or general appropriations ordinance, the recovery plan shall control. The chief administrative officer, the chief financial officer, the governing body, and other officers of the local government shall take and direct actions as may be necessary or advisable to bring and maintain the local government's operations in compliance with the recovery plan.

(9) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of

the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers in section 19 for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement. However, the consent agreement shall not include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government of the powers prescribed for emergency managers in section 19(1)(k).

(10) Unless the state treasurer determines otherwise, beginning 30 days after the date a local government enters into a consent agreement under this act, that local government is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for the remaining term of the consent agreement.

(11) The consent agreement may provide for the required retention by the local government of a consultant for the purpose of assisting the local government to achieve the goals and objectives of the consent agreement.

(12) A local government is released from the requirements under this section upon compliance with the consent agreement as determined by the state financial authority.

Sec. 15. (1) Within 10 days after receipt of the report provided for in section 13, the governor shall make 1 of the following determinations:

(a) The local government is not in a condition of severe financial stress.

(b) The local government is in a condition of severe financial stress as provided in section 14, but a consent agreement containing a plan to resolve the financial stress has been adopted under this act.

(c) A local government financial emergency exists as provided in section 14 and no satisfactory plan exists to resolve the emergency.

(d) The local government entered into a consent agreement containing a continuing operations plan or recovery plan to resolve a financial problem, but materially breached that consent agreement.

(2) If the governor determines pursuant to subsection (1) that a financial emergency exists, the governor shall provide the governing body and chief administrative officer of the local government with a written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the factual findings, and notice that the chief administrative officer or the governing body of the local government has 7 days after the date of the notification to request a hearing conducted by the state financial authority or the state financial authority's designee. Following the hearing, or if no hearing is requested following the expiration of the deadline by which a hearing may be requested, the governor, in his or her sole discretion based upon the record, shall either confirm or revoke, in writing, the determination of the existence of a financial emergency. If confirmed, the governor shall provide a written report to the governing body and chief administrative officer of the local government of the findings of fact of the continuing or newly

developed conditions or events providing a basis for the confirmation of a financial emergency, and a concise and explicit statement of the underlying facts supporting these factual findings.

(3) A local government for which a financial emergency determination under this section has been confirmed to exist may, by resolution adopted by a vote of 2/3 of the members of its governing body elected and serving, appeal this determination within 10 business days to the Ingham county circuit court. The court shall not set aside a determination of financial emergency by the governor unless it finds that the determination is either of the following:

(a) Not supported by competent, material, and substantial evidence on the whole record.

(b) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(4) Upon the confirmation of a finding of a financial emergency, the governor shall declare the local government in receivership and shall appoint an emergency manager to act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Upon the declaration of receivership and during the pendency of receivership, the governing body and the chief administrative officer of the local government may not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager and are subject to any conditions required by the emergency manager.

(5) All of the following apply to an emergency manager:

(a) The emergency manager shall have a minimum of 5 years' experience and demonstrable expertise in business, financial, or local or state budgetary matters.

(b) The emergency manager may but need not be a resident of the local government.

(c) The emergency manager shall be an individual.

(d) Except as otherwise provided in this subdivision, the emergency manager shall serve at the pleasure of the governor. An emergency manager is subject to impeachment and conviction by the legislature as if he or she were a civil officer under section 7 of article XI of the state constitution of 1963. A vacancy in the office of emergency manager shall be filled in the same manner as the original appointment.

(e) The emergency manager's compensation and reimbursement for actual and necessary expenses shall be paid by the local government and shall be set forth in a contract approved by the state treasurer. The contract shall be posted on the department of treasury's website within 7 days after the contract is approved by the state treasurer.

(6) In addition to staff otherwise authorized by law, an emergency manager shall appoint additional staff and secure professional assistance as the emergency manager considers necessary

to fulfill his or her appointment.

(7) The emergency manager shall make quarterly reports to the state treasurer with respect to the financial condition of the local government in receivership, with a copy to the superintendent of public instruction if the local government is a school district.

(8) The emergency manager shall continue in the capacity of an emergency manager as follows:

(a) Until removed by the governor or the legislature as provided in subsection (5)(d). If an emergency manager is removed pursuant to this subdivision, the governor shall within 30 days of the removal appoint a new emergency manager.

(b) Until the financial emergency is rectified.

(9) A local government shall be removed from receivership when the financial conditions are corrected in a sustainable fashion as determined by the state treasurer in accordance with this act.

(10) The governor may delegate his or her duties under this section to the state treasurer.

Sec. 15a. Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, an emergency manager appointed under this act or former 1988 PA 101 or former 1990 PA 72 is subject to all of the following:

(a) 1968 PA 317, MCL 15.321 to 15.330, as a public servant.

(b) 1973 PA 196, MCL 15.341 to 15.348, as a public officer.

(c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a state officer.

Sec. 16. An emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72, and serving on the effective date of this act, shall continue under this act to fulfill his or her powers and duties.

Sec. 17. (1) The emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the manager considers necessary to accomplish the purposes of this act, including, but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan developed pursuant to section 18, including an academic and educational plan for a school district, or to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan. An order issued under this section is binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom it is issued. Local elected and appointed officials and employees, agents, and contractors of the local government shall take and direct those actions that are necessary and advisable to maintain compliance with the financial and operating plan.

(2) If an order of the emergency manager under subsection (1) is not reasonably carried out and the failure to carry out an order is disrupting the emergency manager's ability to manage the local government, the emergency manager, in addition to other remedies provided in this act, may

prohibit the local elected or appointed official or employee, agent, or contractor of the local government from access to the local government's office facilities, electronic mail, and internal information systems.

Sec. 18. (1) The emergency manager shall develop and may amend a written financial and operating plan for the local government. The plan shall have the objectives of assuring that the local government is able to provide necessary or cause to be provided governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government. The financial and operating plan shall provide for all of the following:

(a) Conducting all aspects of the operations of the local government within the resources available according to the emergency manager's revenue estimate.

(b) The payment in full of the scheduled debt service requirements on all bonds, notes, and municipal securities of the local government and all other uncontested legal obligations.

(c) The modification, rejection, termination, and renegotiation of contracts pursuant to section 19.

(d) The timely deposit of required payments to the pension fund for the local government or in which the local government participates.

(e) For school districts, an academic and educational plan.

(f) Any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

(2) Within 45 days after the emergency manager's appointment, the emergency manager shall submit the financial and operating plan to the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district, and to the chief administrative officer and governing body of the local government. The plan shall be regularly reexamined by the emergency manager and the state treasurer and may be modified from time to time by the emergency manager with notice to the state treasurer. If the emergency manager reduces his or her revenue estimates, the emergency manager shall modify the plan to conform to the revised revenue estimates.

(3) The financial and operating plan shall be in a form as provided by the state treasurer and shall contain that information for each year during which year the plan is in effect that the emergency manager, in consultation with the state financial authority, specifies. The financial and operating plan may serve as a deficit elimination plan otherwise required by law if so approved by the state financial authority.

(4) The emergency manager, within 30 days of submitting the financial and operating plan to the state financial authority, shall conduct a public informational meeting on the plan and any modifications to the plan. This subsection does not mean that the emergency manager must receive public approval before he or she implements the plan or any modification of the plan.

Sec. 19. (1) An emergency manager may take 1 or more of the following additional actions with respect to a local government which is in receivership, notwithstanding any charter provision to the contrary:

(a) Analyze factors and circumstances contributing to the financial emergency of the local government and initiate steps to correct the condition.

(b) Amend, revise, approve, or disapprove the budget of the local government, and limit the total amount appropriated or expended.

(c) Receive and disburse on behalf of the local government all federal, state, and local funds earmarked for the local government. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.

(d) Require and approve or disapprove, or amend or revise a plan for paying all outstanding obligations of the local government.

(e) Require and prescribe the form of special reports to be made by the finance officer of the local government to its governing body, the creditors of the local government, the emergency manager, or the public.

(f) Examine all records and books of account, and require under the procedures of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55, or both, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the local government.

(g) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a position by any appointing authority.

(h) Review payrolls or other claims against the local government before payment.

(i) Notwithstanding any minimum staffing level requirement established by charter or contract, establish and implement staffing levels for the local government.

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

(k) After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determine that all of the following conditions are satisfied:

(i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.

(ii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.

(iii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

(iv) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

(l) Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement.

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency manager as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

(i) The emergency manager shall assume and exercise the authority and fiduciary responsibilities of the local pension board, including to the extent applicable, setting and approval of all actuarial assumptions for pension obligations of a municipal government to the local pension fund.

(ii) The emergency manager shall fully comply with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m, and section 24 of article IX of the state constitution of 1963, and any actions taken shall be consistent with the pension fund's qualified plan status under the federal internal revenue code.

(iii) The emergency manager shall not make changes to a local pension fund without identifying the changes and the costs and benefits associated with the changes and receiving the state treasurer's approval for the changes. If a change includes the transfer of funds from 1 pension fund to another pension fund, the valuation of the pension fund receiving the transfer must be actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government was due.

(iv) The emergency manager's assumption and exercise of the authority and fiduciary

responsibilities of the local pension board shall end not later than the termination of the receivership of the municipal government as provided in this act.

(n) Consolidate or eliminate departments of the local government or transfer functions from 1 department to another and appoint, supervise, and, at his or her discretion, remove administrators, including heads of departments other than elected officials.

(o) Employ or contract for, at the expense of the local government and with the approval of the state financial authority, auditors and other technical personnel considered necessary to implement this act.

(p) Retain 1 or more persons or firms, which may be an individual or firm selected from a list approved by the state treasurer, to perform the duties of a local inspector or a local auditor as described in this subdivision. The duties of a local inspector are to assure integrity, economy, efficiency, and effectiveness in the operations of the local government by conducting meaningful and accurate investigations and forensic audits, and to detect and deter waste, fraud, and abuse. At least annually, a report of the local inspector shall be submitted to the emergency manager, the state treasurer, and the superintendent of public instruction if the local government is a school district. The duties of a local auditor are to assure that internal controls over local government operations are designed and operating effectively to mitigate risks that hamper the achievement of the emergency manager's financial plan, assure that local government operations are effective and efficient, assure that financial information is accurate, reliable, and timely, comply with policies, regulations, and applicable laws, and assure assets are properly managed. At least annually, a report of the local auditor shall be submitted to the emergency manager, the state treasurer, and the superintendent of public instruction if the local government is a school district.

(q) An emergency manager may initiate court proceedings in Ingham county circuit court in the name of the local government to enforce compliance with any of his or her orders or any constitutional or legislative mandates, or to restrain violations of any constitutional or legislative power of his or her orders.

(r) If provided in the financial and operating plan, or otherwise with the prior written approval of the governor or his or her designee, sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government, provided the use or transfer of assets, liabilities, functions, or responsibilities for this purpose does not endanger the health, safety, or welfare of residents of the local government or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.

(s) Apply for a loan from the state on behalf of the local government, subject to the conditions of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, in a sufficient amount to pay the expenses of the emergency manager and for other lawful purposes.

(t) Order, as necessary, 1 or more millage elections for the local government consistent with the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article IX of the state constitution of 1963, and any other applicable state law. A millage election ordered for a local government pursuant to this subdivision shall only be held at the general

November election.

(u) Authorize the borrowing of money by the local government as provided by law.

(v) Approve or disapprove of the issuance of obligations of the local government on behalf of the local government under this subdivision. An election to approve or disapprove of the issuance of obligations of the local government pursuant to this subdivision shall only be held at the general November election.

(w) Enter into agreements with creditors or other persons or entities for the payment of existing debts, including the settlement of claims by the creditors.

(x) Enter into agreements with creditors or other persons or entities to restructure debt on terms, at rates of interest, and with security as shall be agreed among the parties, subject to approval by the state treasurer.

(y) Enter into agreements with other local governments, public bodies, or entities for the provision of services, the joint exercise of powers, or the transfer of functions and responsibilities.

(z) For municipal governments, enter into agreements with other units of municipal government to transfer property of the municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as otherwise provided by law, subject to approval by the state treasurer.

(aa) Enter into agreements with 1 or more other local governments or public bodies for the consolidation of services.

(bb) For a city, village, or township, the emergency manager may recommend to the state boundary commission that the municipal government consolidate with 1 or more other municipal governments, if the emergency manager determines that consolidation would materially alleviate the financial emergency of the municipal government and would not materially and adversely affect the financial situation of the government or governments with which the municipal government in receivership is consolidated. Consolidation under this subdivision shall proceed as provided by law.

(cc) For municipal governments, with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law.

(dd) Exercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government as provided in the following acts:

(i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(ii) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(iii) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

- (iv) 1851 PA 156, MCL 46.1 to 46.32.
- (v) 1966 PA 293, MCL 45.501 to 45.521.
- (vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.
- (vii) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.
- (viii) The revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (ix) 1979 PA 94, MCL 388.1601 to 388.1772.

(ee) Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities.

(ff) Remove, replace, appoint, or confirm the appointments to any office, board, commission, authority, or other entity which is within or is a component unit of the local government.

(2) Except as otherwise provided in this act, during the pendency of the receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the emergency manager.

(3) Except as otherwise provided in this subsection, any contract involving a cumulative value of \$50,000.00 or more is subject to competitive bidding by an emergency manager. However, if a potential contract involves a cumulative value of \$50,000.00 or more, the emergency manager may submit the potential contract to the state treasurer for review and the state treasurer may authorize that the potential contract is not subject to competitive bidding.

(4) An emergency manager appointed for a city or village shall not sell or transfer a public utility furnishing light, heat, or power without the approval of a majority of the electors of the city or village voting thereon, or a greater number if the city or village charter provides, as required by section 25 of article VII of the state constitution of 1963. In addition, an emergency manager appointed for a city or village shall not utilize the assets of a public utility furnishing heat, light, or power, the finances of which are separately maintained and accounted for by the city or village, to satisfy the general obligations of the city or village.

Sec. 19a. Immediately upon the local government being placed in receivership under section 15 and during the pendency of the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and members of the governing body of the local government shall be eliminated. This section does not authorize the impairment of vested pension benefits. If an emergency manager has reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and members of the governing body of a local government before the effective date of this act, the reduction, suspension, or elimination is valid to the same extent had it occurred after the

effective date of this act. The emergency manager may restore, in whole or in part, any of the salary, wages, other compensation, or benefits of the chief administrative officer and members of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to the extent that the manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan.

Sec. 20. In addition to the actions authorized in section 19, an emergency manager for a school district may take 1 or more of the following additional actions with respect to a school district that is in receivership:

- (a) Negotiate, renegotiate, approve, and enter into contracts on behalf of the school district.
- (b) Receive and disburse on behalf of the school district all federal, state, and local funds earmarked for the school district. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.
- (c) Seek approval from the superintendent of public instruction for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.
- (d) Sell, assign, transfer, or otherwise use the assets of the school district to meet past or current obligations or assure the fiscal accountability of the school district, provided the use, assignment, or transfer of assets for this purpose does not impair the education of the pupils of the school district. The power under this subdivision includes the closing of schools or other school buildings in the school district.
- (e) Approve or disapprove of the issuance of obligations of the school district.
- (f) Exercise solely, for and on behalf of the school district, all other authority and responsibilities affecting the school district that are prescribed by law to the school board and superintendent of the school district.
- (g) Employ or contract for, at the expense of the school district, school administrators considered necessary to implement this act.

Sec. 20a. Unless the potential sale and value of an asset is included in the emergency manager's financial and operating plan prepared under section 18, the emergency manager shall not sell an asset of the local government valued at more than \$50,000.00 without the state treasurer's approval.

Sec. 20b. A provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter that occurs in the line of duty shall not be impaired and is not subject to any provision of this act authorizing an emergency manager to reject, modify, or terminate 1 or more terms of an existing collective bargaining agreement.

Sec. 21. The emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible

criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation.

Sec. 22. (1) An emergency manager appointed under this act shall file with the governor, the senate majority leader, the speaker of the house of representatives, and the clerk of the local government that is in receivership, and shall post on the internet on the website of the local government, a report that contains all of the following:

(a) A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the source of the funds.

(b) A list of each contract that the emergency manager awarded or approved with a cumulative value of \$5,000.00 or more, the purpose of the contract, and the identity of the contractor.

(c) A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the proposed use of the funds.

(d) A description of any new position created or any vacancy in a position filled by the appointing authority.

(e) A description of any position that has been eliminated or from which an employee has been laid off.

(f) A copy of the contract with the emergency manager as provided in section 15(5)(e).

(g) The salary and benefits of the emergency manager.

(h) The financial and operating plan as required under section 18.

(2) The report required under this section shall be submitted every 3 months, beginning 6 months after the emergency manager's appointment.

Sec. 23. (1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under title 11 of the United States Code, 11 USC 101 to 1532. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. Upon receipt of the written approval, the emergency manager is authorized to proceed under title 11 of the United States Code, 11 USC 101 to 1532. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under title 11 of the United States Code, 11 USC 101 to 1532.

(2) The recommendation to the governor and the state treasurer under subsection (1) shall include 1 of the following:

(a) A determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner.

(b) A determination by the emergency manager that a plan, in effect for at least 180 days, cannot be implemented as written or as it might be amended in a manner that can satisfactorily rectify the financial emergency in a timely manner.

(3) The emergency manager shall provide a copy of the recommendation as provided under subsection (1) to the superintendent of public instruction if the local government is a school district.

Sec. 24. A local government that is in receivership is considered to be in a condition of financial emergency until the emergency manager declares the financial emergency to be rectified in his or her quarterly report to the state treasurer required under section 15, and is subject to the written concurrence of the state treasurer, and the concurrence of the superintendent of public instruction if the local government is a school district. The declaration shall not be made until the financial conditions have been addressed and rectified.

Sec. 25. (1) An emergency manager is immune from liability as provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person employed by an emergency manager is immune from liability as provided in section 7(2) of 1964 PA 170, MCL 691.1407.

(2) The attorney general shall defend any civil claim, demand, or lawsuit which challenges any of the following:

(a) The validity of this act.

(b) The authority of a state official or officer acting under this act.

(c) The authority of an emergency manager if the emergency manager is or was acting within the scope of authority for an emergency manager under this act.

(3) With respect to any aspect of a receivership under this act, the costs incurred by the attorney general in carrying out the responsibilities of subsection (2) for attorneys, experts, court filing fees, and other reasonable and necessary expenses shall be at the expense of the local government that is subject to that receivership and shall be reimbursed to the attorney general by the local government. The failure of a municipal government that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the municipal government from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the school district from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school

aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

(4) An emergency manager may procure and maintain, at the expense of the local government for which the emergency manager is appointed, worker's compensation, general liability, professional liability, and motor vehicle insurance for the emergency manager and any employee, agent, appointee, or contractor of the emergency manager as may be provided to elected officials, appointed officials, or employees of the local government. The insurance procured and maintained by an emergency manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the emergency manager and any employee, agent, appointee, or contractor of the emergency manager from the date of appointment of the emergency manager to the expiration of the applicable statute of limitation if the claim, demand, or lawsuit asserted or costs recovered against the emergency manager or any employee, agent, appointee, or contractor of the emergency manager resulted from conduct of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager taken in accordance with this act during the emergency manager's term of service.

(5) If, after the date that the service of an emergency manager is concluded, the emergency manager or any employee, agent, appointee, or contractor of the emergency manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of that emergency manager, and not covered by a procured worker's compensation, general liability, professional liability, or motor vehicle insurance, litigation expenses of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager, including attorney fees for civil and criminal proceedings and preparation for reasonably anticipated proceedings, and payments made in settlement of civil proceedings both filed and anticipated, shall be paid out of the funds of the local government that is or was subject to the receivership administered by that emergency manager, provided that the litigation expenses are approved by the state treasurer and that the state treasurer determines that the conduct resulting in actual or threatened legal proceedings that is the basis for the payment is based upon both of the following:

(a) The scope of authority of the person or entity seeking the payment.

(b) The conduct occurred on behalf of a local government while it was in receivership under this act.

(6) The failure of a municipal government to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

Sec. 26. (1) The local elected and appointed officials and employees, agents, and contractors of a local government shall promptly and fully provide the assistance and information necessary and properly requested by the state financial authority, a review team, or the emergency manager in

the effectuation of their duties and powers and of the purposes of this act. If the review team or emergency manager believes that a local elected or appointed official or employee, agent, or contractor of the local government is not answering questions accurately or completely or is not furnishing information requested, the review team or emergency manager may issue subpoenas and administer oaths to the local elected or appointed official or employee, agent, or contractor to furnish answers to questions or to furnish documents or records, or both. If the local elected or appointed official or employee, agent, or contractor refuses, the review team or emergency manager may bring an action in the circuit court in which the local government is located or Ingham county circuit court, as determined by the emergency manager, to compel testimony and furnish records and documents. An action in mandamus may be used to enforce this section.

(2) Failure of a local government official to abide by this act shall be considered gross neglect of duty, which the review team or emergency manager may report to the state financial authority and the attorney general. Following review and a hearing with a local government elected official, the state financial authority may recommend to the governor that the governor remove the elected official from office. If the governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

(3) Subject to section 30(2), a local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Sec. 27. (1) Before the termination of receivership and the completion of the emergency manager's term, the manager shall adopt and implement a 2-year budget, including all contractual and employment agreements, for the local government commencing with the termination of receivership.

(2) After the completion of the emergency manager's term and the termination of receivership, the governing body of the local government shall not amend the 2-year budget adopted under subsection (1) without the approval of the state treasurer, and shall not revise any order or ordinance implemented by the emergency manager during his or her term prior to 1 year after the termination of receivership.

Sec. 28. This act is not construed to give the emergency manager or the state financial authority the power to impose taxes, over and above those already authorized by law, without the approval at an election of a majority of the qualified electors voting on the question.

Sec. 29. The state financial authority is authorized and directed to issue bulletins or adopt rules as necessary to carry out the purposes of this act. A rule adopted under this section shall be adopted in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 30. (1) An emergency financial manager appointed and serving under state law prior to the effective date of this act shall continue under this act as an emergency manager for the local government and shall fulfill his or her duties and responsibilities and exercise all of the powers

granted under former 1988 PA 101 or former 1990 PA 72. Except as provided in subsection (2), the provisions of this act shall apply to any local government for which an emergency financial manager is appointed and serving as of the effective date of this act.

(2) For a local government for which an emergency financial manager is serving as of the effective date of this act, the provisions of section 26(3) shall not become applicable until 60 days after the effective date of this act.

Sec. 31. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application. The provisions of this act are severable.

Enacting section 1. The local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291, is repealed.

Enacting section 2. This act does not take effect unless Senate Bill No. 158 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

EXHIBIT 11

Act No. 436
Public Acts of 2012
Approved by the Governor
December 26, 2012
Filed with the Secretary of State
December 27, 2012
EFFECTIVE DATE: March 28, 2013

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Pavlov

ENROLLED SENATE BILL No. 865

AN ACT to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of local units of government and school districts and the provision of services by local units of government and school districts; to provide criteria to be used in determining the financial condition of local units of government and school districts; to authorize a declaration of the existence of a financial emergency within a local unit of government or school district; to prescribe remedial measures to address a financial emergency within a local unit of government or school district; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager for a local unit of government or school district; to provide for the modification or termination of contracts under certain circumstances; to provide for the termination of a financial emergency within a local unit of government or school district; to provide a process by which a local unit of government or school district may file for bankruptcy; to prescribe the powers and duties of certain state agencies and officials and officials within local units of government and school districts; to provide for appropriations; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "local financial stability and choice act".

Sec. 2. As used in this act:

(a) "Chapter 9" means chapter 9 of title 11 of the United States Code, 11 USC 901 to 946.

(b) "Chief administrative officer" means any of the following:

(i) The manager of a village or, if a village does not employ a manager, the president of the village.

(ii) The city manager of a city or, if a city does not employ a city manager, the mayor of the city.

(iii) The manager of a township or the manager or superintendent of a charter township or, if the township does not employ a manager or superintendent, the supervisor of the township.

(iv) The elected county executive or appointed county manager of a county or, if the county has not adopted the provisions of either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL 45.501 to 45.521, the county's chairperson of the county board of commissioners.

(v) The chief operating officer of an authority or of a public utility owned by a city, village, township, or county.

(vi) The superintendent of a school district.

(c) "Creditor" means either of the following:

(i) An entity that has a noncontingent claim against a local government that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least \$5,000,000.00 or comprises more than 5% of the local government's debt or obligations, whichever is less.

(ii) An entity that would have a noncontingent claim against the local government upon the rejection of an executory contract or unexpired lease in a chapter 9 case and whose claim would represent at least \$5,000,000.00 or would comprise more than 5% of the local government's debt or obligations, whichever is less.

(d) "Debtor" means a local government that is authorized to proceed under chapter 9 by this act and that meets the requirements of chapter 9.

(e) "Emergency manager" means an emergency manager appointed under section 9. An emergency manager includes an emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72 who was acting in that capacity on the effective date of this act.

(f) "Entity" means a partnership, nonprofit or business corporation, limited liability company, labor organization, or any other association, corporation, trust, or other legal entity.

(g) "Financial and operating plan" means a written financial and operating plan for a local government under section 11, including an educational plan for a school district.

(h) "Good faith" means participation by an interested party or a local government representative in the neutral evaluation process with the intent to negotiate a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant participants through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the local government's debt.

(i) "Interested party" means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that under its collective bargaining agreements has standing to initiate contract negotiations with the local government, or a representative selected by an association of retired employees of the public entity who receive income or benefits from the public entity. A local government may invite holders of contingent claims to participate as interested parties in the neutral evaluation process if the local government determines that the contingency is likely to occur and the claim may represent at least \$5,000,000.00 or comprise more than 5% of the local government's debt or obligations, whichever is less.

(j) "Local emergency financial assistance loan board" means the local emergency financial assistance loan board created under section 2 of the emergency municipal loan act, 1980 PA 243, MCL 141.932.

(k) "Local government" means a municipal government or a school district.

(l) "Local government representative" means the person or persons designated by the governing body of the local government with authority to make recommendations and to attend the neutral evaluation process on behalf of the governing body of the local government.

(m) "Local inspector" means a certified forensic accountant, certified public accountant, attorney, or similarly credentialed person whose responsibility it is to determine the existence of proper internal and management controls, fraud, criminal activity, or any other accounting or management deficiencies.

(n) "Municipal government" means a city, a village, a township, a charter township, a county, a department of county government if the county has an elected county executive under 1966 PA 293, MCL 45.501 to 45.521, an authority established by law, or a public utility owned by a city, village, township, or county.

(o) "Neutral evaluation process" means a form of alternative dispute resolution or mediation between a local government and interested parties as provided for in section 25.

(p) "Neutral evaluator" means an impartial, unbiased person or entity, commonly known as a mediator, who assists local governments and interested parties in reaching their own settlement of issues under this act, who is not aligned with any party, and who has no authoritative decision-making power.

(q) "Receivership" means the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include chapter 9 or any provision under federal bankruptcy law.

(r) "Review team" means a review team appointed under section 4.

(s) "School board" means the governing body of a school district.

(t) "School district" means a school district as that term is defined in section 6 of the revised school code, 1976 PA 451, MCL 380.6, or an intermediate school district as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(u) "State financial authority" means the following:

(i) For a municipal government, the state treasurer.

(ii) For a school district, the superintendent of public instruction.

(v) "Strong mayor" means a mayor who has been granted veto power for any purpose under the charter of that local government.

(w) "Strong mayor approval" means approval of a resolution under 1 of the following conditions:

(i) The strong mayor approves the resolution.

(ii) The resolution is approved by the governing body with sufficient votes to override a veto by the strong mayor.

(iii) The strong mayor vetoes the resolution and the governing body overrides the veto.

Sec. 3. The legislature finds and declares all of the following:

(a) That the health, safety, and welfare of the citizens of this state would be materially and adversely affected by the insolvency of local governments and that the fiscal accountability of local governments is vitally necessary to the interests of the citizens of this state to assure the provision of necessary governmental services essential to public health, safety, and welfare.

(b) That it is vitally necessary to protect the credit of this state and its political subdivisions and that it is necessary for the public good and it is a valid public purpose for this state to take action and to assist a local government in a financial emergency so as to remedy the financial emergency by requiring prudent fiscal management and efficient provision of services, permitting the restructuring of contractual obligations, and prescribing the powers and duties of state and local government officials and emergency managers.

(c) That the fiscal stability of local governments is necessary to the health, safety, and welfare of the citizens of this state and it is a valid public purpose for this state to assist a local government in a condition of financial emergency by providing for procedures of alternative dispute resolution between a local government and its creditors to resolve disputes, to determine criteria for establishing the existence of a financial emergency, and to set forth the conditions for a local government to exercise powers under federal bankruptcy law.

(d) That the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Sec. 4. (1) The state financial authority may conduct a preliminary review to determine the existence of probable financial stress within a local government if 1 or more of the following occur:

(a) The governing body or the chief administrative officer of a local government requests a preliminary review. The request shall be in writing and shall identify the existing or anticipated financial conditions or events that make the request necessary.

(b) The state financial authority receives a written request from a creditor with an undisputed claim that remains unpaid 6 months after its due date against the local government that exceeds the greater of \$10,000.00 or 1% of the annual general fund budget of the local government; provided that the creditor notifies the local government in writing at least 30 days before his or her request to the state financial authority of his or her intention to submit a written request under this subdivision.

(c) The state financial authority receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the local government's jurisdiction equal to not less than 5% of the total vote cast for all candidates for governor within the local government's jurisdiction at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the local government.

(d) The state financial authority receives written notification that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.

(e) The state financial authority receives written notification that the local government has failed for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(f) The state financial authority receives written notification from a trustee, paying agent, bondholder, or auditor engaged by the local government of a default in a bond or note payment or a violation of 1 or more bond or note covenants.

(g) The state financial authority of a local government receives a resolution from either the senate or the house of representatives requesting a preliminary review.

(h) The local government has violated a requirement of, or a condition of an order issued pursuant to, former 1943 PA 202, the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.

(i) The municipal government has violated the conditions of an order issued by the local emergency financial assistance loan board pursuant to the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(j) The local government has violated a requirement of sections 17 to 20 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.437 to 141.440.

(k) The local government fails to timely file an annual financial report or audit that conforms with the minimum procedures and standards of the state financial authority and is required for local governments under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55.

(l) If the local government is a school district, the school district fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the superintendent of public instruction and is required under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(m) The municipal government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.

(n) The local government is in breach of its obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(o) A court has ordered an additional tax levy without the prior approval of the governing body of the local government.

(p) The municipal government has ended a fiscal year in a deficit condition as defined in section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921, or has failed to comply with the requirements of that section for filing or instituting a financial plan to correct the deficit condition.

(q) The school district ended its most recently completed fiscal year with a deficit in 1 or more of its funds and the school district has not submitted a deficit elimination plan to the state financial authority within 30 days after the district's deadline for submission of its annual financial statement.

(r) The local government has been assigned a long-term debt rating within or below the BBB category or its equivalent by 1 or more nationally recognized credit rating agencies.

(s) The existence of other facts or circumstances that, in the state treasurer's sole discretion for a municipal government, are indicative of probable financial stress or that, in the state treasurer's or superintendent of public instruction's sole discretion for a school district, are indicative of probable financial stress.

(2) Before commencing the preliminary review under subsection (1), the state financial authority shall provide the local government specific written notification that it intends to conduct a preliminary review. Elected and appointed officials of a local government shall promptly and fully provide the assistance and information requested by the state financial authority for that local government in conducting the preliminary review. The state financial authority shall provide an interim report of its findings to the local government within 20 days following the commencement of the preliminary review. In addition, a copy of the interim report shall be provided to each state senator and state representative who represents that local government. The local government may provide comments to the state financial authority concerning the interim report within 5 days after the interim report is provided to the local government. The state financial authority shall prepare and provide a final report detailing its preliminary review to the local emergency financial assistance loan board. In addition, a copy of the final report shall be provided to each state senator and state representative who represents that local government. The final report shall be posted on the department of treasury's website within 7 days after the final report is provided to the local emergency financial assistance loan board. The preliminary review and final report by the state financial authority shall be completed within 30 days following commencement of the preliminary review. Within 20 days after receiving the final report from the state financial authority, the local emergency financial assistance loan board shall determine if probable financial stress exists for the local government.

(3) If a finding of probable financial stress is made for a municipal government by the local emergency financial assistance loan board under subsection (2), the governor shall appoint a review team for that municipal government consisting of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a municipal financial management review.

(4) If a finding of probable financial stress is made for a school district by the local emergency financial assistance loan board under subsection (2), the governor shall appoint a review team for that school district consisting of the state treasurer or his or her designee, the superintendent of public instruction or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a school district financial management review.

(5) The department of treasury shall provide staff support to each review team appointed under this section.

(6) A review team appointed under former 1988 PA 101 or former 1990 PA 72 and serving immediately prior to the effective date of this act shall continue under this act to fulfill its powers and duties. All proceedings and actions taken

by the governor, the state treasurer, the superintendent of public instruction, the local emergency financial assistance loan board, or a review team under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 that was in effect immediately prior to the effective date of this act is ratified and is binding and enforceable under this act.

Sec. 5. (1) In conducting its review, the review team may do either or both of the following:

- (a) Examine the books and records of the local government.
- (b) Utilize the services of other state agencies and employees.

(2) The review team shall meet with the local government as part of its review. At this meeting, the review team shall receive, discuss, and consider information provided by the local government concerning the financial condition of the local government. In addition, the review team shall hold at least 1 public information meeting in the jurisdiction of the local government at which the public may provide comment.

(3) The review team shall submit a written report of its findings to the governor within 60 days following its appointment or earlier if required by the governor. Upon request, the governor may grant one 30-day extension of this 60-day time limit. A copy of the report shall be forwarded by the state treasurer to the chief administrative officer and the governing body of the local government, the speaker of the house of representatives, the senate majority leader, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The report shall be posted on the department of treasury's website within 7 days after the report is submitted to the governor. The report shall include the existence, or an indication of the likely occurrence, of any of the following:

(a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.

(b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:

(i) Taxes withheld on the income of employees.

(ii) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.

(iii) Any contribution required by a pension, retirement, or benefit plan.

(c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(d) The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.

(e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.

(f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 5% of the budgeted revenues for the general fund.

(g) Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(h) Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope.

(i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.

(j) Existence of a structural operating deficit.

(k) Use of restricted revenues for purposes not authorized by law.

(l) The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.

(m) Any other facts and circumstances indicative of local government financial emergency.

(4) The review team shall include 1 of the following conclusions in its report:

(a) A financial emergency does not exist within the local government.

(b) A financial emergency exists within the local government.

(5) The review team may, with the approval of the state financial authority, appoint an individual or firm to carry out the review and submit a report to the review team for approval. The department of treasury may enter into a contract with the individual or firm respecting the terms and conditions of the appointment.

(6) For purposes of this section:

(a) A financial emergency does not exist within a local government if the report under subsection (3) concludes that none of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year or, if they occur, do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.

(b) A financial emergency exists within a local government if any of the following occur:

(i) The report under subsection (3) concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(ii) The local government has failed to provide timely and accurate information enabling the review team to complete its report under subsection (3).

(iii) The local government has failed to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(iv) The chief administrative officer of the local government concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare, and the chief administrative officer recommends that a financial emergency be declared and the state treasurer concurs with the recommendation.

Sec. 6. (1) Within 10 days after receipt of the report under section 5, the governor shall make 1 of the following determinations:

(a) A financial emergency does not exist within the local government.

(b) A financial emergency exists within the local government.

(2) Before making a determination under subsection (1), the governor, in his or her sole discretion, may provide officials of the local government an opportunity to submit a written statement concerning their agreement or disagreement with the findings and conclusion of the review team report under section 5. If the governor determines pursuant to subsection (1) that a financial emergency exists, the governor shall provide the governing body and chief administrative officer of the local government with a written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the factual findings, and notice that the chief administrative officer or the governing body of the local government has 7 days after the date of the notification to request a hearing conducted by the state financial authority or the state financial authority's designee. Following the hearing, or if no hearing is requested following the expiration of the deadline by which a hearing may be requested, the governor, in his or her sole discretion based upon the record, shall either confirm or revoke, in writing, the determination of the existence of a financial emergency. If confirmed, the governor shall provide a written report to the governing body and chief administrative officer of the local government of the findings of fact of the continuing or newly developed conditions or events providing a basis for the confirmation of a financial emergency and a concise and explicit statement of the underlying facts supporting these factual findings. In addition, a copy of the report shall be provided to each state senator and state representative who represents that local government. The report shall be posted on the department of treasury's website within 7 days after the report is provided to the governing body and chief executive officer of the local government.

(3) A local government for which a financial emergency determination under this section has been confirmed to exist may, by resolution adopted by a vote of 2/3 of the members of its governing body elected and serving, appeal this determination within 10 business days to the Michigan court of claims. A local government may, by resolution adopted by a vote of 2/3 of the members of its governing body elected and serving, waive its right to appeal as provided in this subsection. The court shall not set aside a determination of financial emergency by the governor unless it finds that the determination is either of the following:

(a) Not supported by competent, material, and substantial evidence on the whole record.

(b) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

Sec. 7. (1) Notwithstanding section 6(3), upon the confirmation of a finding of a financial emergency under section 6, the governing body of the local government shall, by resolution within 7 days after the confirmation of a finding of a financial emergency, select 1 of the following local government options to address the financial emergency:

(a) The consent agreement option pursuant to section 8.

(b) The emergency manager option pursuant to section 9.

(c) The neutral evaluation process option pursuant to section 25.

(d) The chapter 9 bankruptcy option pursuant to section 26.

(2) Subject to subsection (3), if the local government has a strong mayor, the resolution under subsection (1) requires strong mayor approval. If the local government is a school district, the resolution shall be approved by the school board. The resolution shall be filed with the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district.

(3) If the governing body of the local government does not pass a resolution as required under subsection (1), the local government shall proceed under the neutral evaluation process pursuant to section 25.

(4) Subject to section 9(6)(c) and (11), unless authorized by the governor, a local government shall not utilize 1 of the local options listed in subsection (1)(a) to (d) more than 1 time.

Sec. 8. (1) The chief administrative officer of a local government may negotiate and sign a consent agreement with the state treasurer as provided for in this act. If the local government is a school district and the consent agreement contains an educational plan, the consent agreement shall also be signed by the superintendent of public instruction. The consent agreement shall provide for remedial measures considered necessary to address the financial emergency within the local government and provide for the financial stability of the local government. The consent agreement may utilize state financial management and technical assistance as necessary in order to alleviate the financial emergency. The consent agreement shall also provide for periodic financial status reports to the state treasurer, with a copy of each report to each state senator and state representative who represents that local government. The consent agreement may provide for a board appointed by the governor to monitor the local government's compliance with the consent agreement. In order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state treasurer. Nothing in the consent agreement shall limit the ability of the state treasurer in his or her sole discretion to declare a material breach of the consent agreement. A consent agreement shall provide that in the event of a material uncured breach of the consent agreement, the governor may place the local government in receivership or in the neutral evaluation process. If within 30 days after a local government selects the consent agreement option under section 7(1)(a) or sooner in the discretion of the state treasurer, a consent agreement cannot be agreed upon, the state treasurer shall require the local government to proceed under 1 of the other local options provided for in section 7.

(2) A consent agreement as provided in subsection (1) may require a continuing operations plan or a recovery plan if required by the state treasurer.

(3) If the state treasurer requires that a consent agreement include a continuing operations plan, the local government shall prepare and file the continuing operations plan with the state treasurer as provided for in the consent agreement. The state treasurer shall approve or reject the initial continuing operations plan within 14 days of receiving it from the local government. If a continuing operations plan is rejected, the local government shall refile an amended plan within 30 days of the rejection, addressing any concerns raised by the state treasurer or the superintendent of public instruction regarding an educational plan. If the amended plan is rejected, then the local government may be considered to be in material breach of the consent agreement. The local government shall file annual updates to its continuing operations plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the continuing operations plan remains in effect.

(4) The continuing operations plan shall be in a form prescribed by the state treasurer but shall, at a minimum, include all of the following:

(a) A detailed projected budget of revenues and expenditures over not less than 3 fiscal years which demonstrates that the local government's expenditures will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.

(b) A cash flow projection for the budget period.

(c) An operating plan for the budget period that assures fiscal accountability for the local government.

(d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.

(e) An evaluation of the costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed within the budget period.

(f) A provision for submitting quarterly compliance reports to the state treasurer demonstrating compliance with the continuing operations plan, with a copy of each report to each state senator and state representative who represents that local government. Each quarterly compliance report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(5) If a continuing operations plan is approved for a municipal government, the municipal government shall amend the budget and general appropriations ordinance adopted by the municipal government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. If a continuing operations plan is approved for a school district, the school district shall amend the budget adopted by the school district under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. The chief

administrative officer, the chief financial officer, the governing body, and other officials of the local government shall take and direct such actions as may be necessary or advisable to maintain the local government's operations in compliance with the continuing operations plan.

(6) If the state treasurer requires that a consent agreement include a recovery plan, the state treasurer, with input from the local government, shall develop and adopt a recovery plan. If a recovery plan is developed and adopted for the local government, the local government shall file annual updates to its recovery plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the recovery plan remains in effect.

(7) A recovery plan may include terms and provisions as may be approved in the discretion of the state treasurer, including, but not limited to, 1 or more of the following:

(a) A detailed projected budget of revenues and expenditures over not less than 3 fiscal years that demonstrates that the local government's expenditures will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.

(b) A cash flow projection for the budget period.

(c) An operating plan for the budget period that assures fiscal accountability for the local government.

(d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.

(e) An evaluation of costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations.

(f) Procedures for cash control and cash management, including, but not limited to, procedures for timely collection, securing, depositing, balancing, and expending of cash. Procedures for cash control and cash management may include the designation of appropriate fiduciaries.

(g) A provision for submitting quarterly compliance reports to the state treasurer and the chief administrative officer of the local government that demonstrate compliance with the recovery plan, with a copy of each report to each state senator and state representative who represents that local government. Each quarterly compliance report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(8) The recovery plan may include the appointment of a local auditor or local inspector, or both, in accordance with section 12(1)(p).

(9) If a recovery plan is developed and adopted by the state treasurer for a local government, the recovery plan shall supersede the budget and general appropriations ordinance adopted by the local government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general appropriations ordinance is considered amended to the extent necessary or advisable to give full effect to the recovery plan. In the event of any inconsistency between the recovery plan and the budget or general appropriations ordinance, the recovery plan shall control. The chief administrative officer, the chief financial officer, the governing body, and other officers of the local government shall take and direct actions as may be necessary or advisable to bring and maintain the local government's operations in compliance with the recovery plan.

(10) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers as otherwise provided in this act for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement. However, the consent agreement shall not include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government of the powers prescribed for emergency managers in section 12(1)(k).

(11) Unless the state treasurer determines otherwise, beginning 30 days after the date a local government enters into a consent agreement under this act, that local government is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for the remaining term of the consent agreement.

(12) The consent agreement may provide for the required retention by the local government of a consultant for the purpose of assisting the local government to achieve the goals and objectives of the consent agreement.

(13) A local government is released from the requirements under this section upon compliance with the consent agreement as determined by the state treasurer.

Sec. 9. (1) The governor may appoint an emergency manager to address a financial emergency within that local government as provided for in this act.

(2) Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in

receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

(3) All of the following apply to an emergency manager:

(a) The emergency manager shall have a minimum of 5 years' experience and demonstrable expertise in business, financial, or local or state budgetary matters.

(b) The emergency manager may, but need not, be a resident of the local government.

(c) The emergency manager shall be an individual.

(d) Except as otherwise provided in this subdivision, the emergency manager shall serve at the pleasure of the governor. An emergency manager is subject to impeachment and conviction by the legislature as if he or she were a civil officer under section 7 of article XI of the state constitution of 1963. A vacancy in the office of emergency manager shall be filled in the same manner as the original appointment.

(e) The emergency manager's compensation shall be paid by this state and shall be set forth in a contract approved by the state treasurer. The contract shall be posted on the department of treasury's website within 7 days after the contract is approved by the state treasurer.

(f) In addition to the salary provided to an emergency manager in a contract approved by the state treasurer under subdivision (e), this state may receive and distribute private funds to an emergency manager. As used in this subdivision, "private funds" means any money the state receives for the purpose of allocating additional salary to an emergency manager. Private funds distributed under this subdivision are subject to section 1 of 1901 PA 145, MCL 21.161, and section 17 of article IX of the state constitution of 1963.

(4) In addition to staff otherwise authorized by law, an emergency manager shall appoint additional staff and secure professional assistance as the emergency manager considers necessary to fulfill his or her appointment.

(5) The emergency manager shall submit quarterly reports to the state treasurer with respect to the financial condition of the local government in receivership, with a copy to the superintendent of public instruction if the local government is a school district and a copy to each state senator and state representative who represents that local government. In addition, each quarterly report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(6) The emergency manager shall continue in the capacity of an emergency manager as follows:

(a) Until removed by the governor or the legislature as provided in subsection (3)(d). If an emergency manager is removed, the governor shall within 30 days of the removal appoint a new emergency manager.

(b) Until the financial emergency is rectified.

(c) If the emergency manager has served for at least 18 months after his or her appointment under this act, the emergency manager may, by resolution, be removed by a 2/3 vote of the governing body of the local government. If the local government has a strong mayor, the resolution requires strong mayor approval before the emergency manager may be removed. Notwithstanding section 7(4), if the emergency manager is removed under this subsection and the local government has not previously breached a consent agreement under this act, the local government may within 10 days negotiate a consent agreement with the state treasurer. If a consent agreement is not agreed upon within 10 days, the local government shall proceed with the neutral evaluation process pursuant to section 25.

(7) A local government shall be removed from receivership when the financial conditions are corrected in a sustainable fashion as provided in this act. In addition, the local government may be removed from receivership if an emergency manager is removed under subsection (6)(c) and the governing body of the local government by 2/3 vote approves a resolution for the local government to be removed from receivership. If the local government has a strong mayor, the resolution requires strong mayor approval before the local government is removed from receivership. A local government that is removed from receivership while a financial emergency continues to exist as determined by the governor shall proceed under the neutral evaluation process pursuant to section 25.

(8) The governor may delegate his or her duties under this section to the state treasurer.

(9) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, an emergency manager is subject to all of the following:

(a) 1968 PA 317, MCL 15.321 to 15.330, as a public servant.

(b) 1973 PA 196, MCL 15.341 to 15.348, as a public officer.

(c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a state officer.

(10) An emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72, and serving immediately prior to the effective date of this act, shall be considered an emergency manager under this act and shall

continue under this act to fulfill his or her powers and duties. Notwithstanding any other provision of this act, the governor may appoint a person who was appointed as an emergency manager under former 2011 PA 4 or an emergency financial manager under former 1988 PA 101 or former 1990 PA 72 to serve as an emergency manager under this act.

(11) Notwithstanding section 7(4) and subject to the requirements of this section, if an emergency manager has served for less than 18 months after his or her appointment under this act, the governing body of the local government may pass a resolution petitioning the governor to remove the emergency manager as provided in this section and allow the local government to proceed under the neutral evaluation process as provided in section 25. If the local government has a strong mayor, the resolution requires strong mayor approval. If the governor accepts the resolution, notwithstanding section 7(4), the local government shall proceed under the neutral evaluation process as provided in section 25.

Sec. 10. (1) An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary to accomplish the purposes of this act, including, but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan, including an educational plan for a school district, or to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan. An order issued under this section is binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom it is issued. Local elected and appointed officials and employees, agents, and contractors of the local government shall take and direct those actions that are necessary and advisable to maintain compliance with the financial and operating plan.

(2) If an order of the emergency manager under subsection (1) is not carried out and the failure to carry out an order is disrupting the emergency manager's ability to manage the local government, the emergency manager, in addition to other remedies provided in this act, may prohibit the local elected or appointed official or employee, agent, or contractor of the local government from access to the local government's office facilities, electronic mail, and internal information systems.

Sec. 11. (1) An emergency manager shall develop and may amend a written financial and operating plan for the local government. The plan shall have the objectives of assuring that the local government is able to provide or cause to be provided governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government. The financial and operating plan shall provide for all of the following:

(a) Conducting all aspects of the operations of the local government within the resources available according to the emergency manager's revenue estimate.

(b) The payment in full of the scheduled debt service requirements on all bonds, notes, and municipal securities of the local government, contract obligations in anticipation of which bonds, notes, and municipal securities are issued, and all other uncontested legal obligations.

(c) The modification, rejection, termination, and renegotiation of contracts pursuant to section 12.

(d) The timely deposit of required payments to the pension fund for the local government or in which the local government participates.

(e) For school districts, an educational plan.

(f) Any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

(2) Within 45 days after the emergency manager's appointment, the emergency manager shall submit the financial and operating plan, and an educational plan if the local government is a school district, to the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district, and to the chief administrative officer and governing body of the local government. The plan shall be regularly reexamined by the emergency manager and the state treasurer and may be modified from time to time by the emergency manager with notice to the state treasurer. If the emergency manager reduces his or her revenue estimates, the emergency manager shall modify the plan to conform to the revised revenue estimates.

(3) The financial and operating plan shall be in a form as provided by the state treasurer and shall contain that information for each year during which year the plan is in effect that the emergency manager, in consultation with the state financial authority, specifies. The financial and operating plan may serve as a deficit elimination plan otherwise required by law if so approved by the state financial authority.

(4) The emergency manager, within 30 days of submitting the financial and operating plan to the state financial authority, shall conduct a public informational meeting on the plan and any modifications to the plan. This subsection does not mean that the emergency manager must receive public approval before he or she implements the plan or any modification of the plan.

(5) For a local government in receivership immediately prior to the effective date of this act, a financial and operating plan for that local government adopted under former 2011 PA 4 or a financial plan for that local government

adopted under former 1990 PA 72 shall be effective and enforceable as a financial and operating plan for the local government under this act until modified or rescinded under this act.

Sec. 12. (1) An emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary:

(a) Analyze factors and circumstances contributing to the financial emergency of the local government and initiate steps to correct the condition.

(b) Amend, revise, approve, or disapprove the budget of the local government, and limit the total amount appropriated or expended.

(c) Receive and disburse on behalf of the local government all federal, state, and local funds earmarked for the local government. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.

(d) Require and approve or disapprove, or amend or revise, a plan for paying all outstanding obligations of the local government.

(e) Require and prescribe the form of special reports to be made by the finance officer of the local government to its governing body, the creditors of the local government, the emergency manager, or the public.

(f) Examine all records and books of account, and require under the procedures of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55, or both, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the local government.

(g) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a position by any appointing authority.

(h) Review payrolls or other claims against the local government before payment.

(i) Notwithstanding any minimum staffing level requirement established by charter or contract, establish and implement staffing levels for the local government.

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

(k) Subject to section 19, after meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determine that all of the following conditions are satisfied:

(i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.

(ii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.

(iii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

(iv) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

(l) Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement.

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency manager as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

(i) The emergency manager shall assume and exercise the authority and fiduciary responsibilities of the local pension board including, to the extent applicable, setting and approval of all actuarial assumptions for pension obligations of a municipal government to the local pension fund.

(ii) The emergency manager shall fully comply with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m, and section 24 of article IX of the state constitution of 1963, and any actions taken shall be consistent with the pension fund's qualified plan status under the federal internal revenue code.

(iii) The emergency manager shall not make changes to a local pension fund without identifying the changes and the costs and benefits associated with the changes and receiving the state treasurer's approval for the changes. If a change includes the transfer of funds from 1 pension fund to another pension fund, the valuation of the pension fund receiving the transfer must be actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government was due.

(iv) The emergency manager's assumption and exercise of the authority and fiduciary responsibilities of the local pension board shall end not later than the termination of the receivership of the municipal government as provided in this act.

(n) Consolidate or eliminate departments of the local government or transfer functions from 1 department to another and appoint, supervise, and, at his or her discretion, remove administrators, including heads of departments other than elected officials.

(o) Employ or contract for, at the expense of the local government and with the approval of the state financial authority, auditors and other technical personnel considered necessary to implement this act.

(p) Retain 1 or more persons or firms, which may be an individual or firm selected from a list approved by the state treasurer, to perform the duties of a local inspector or a local auditor as described in this subdivision. The duties of a local inspector are to assure integrity, economy, efficiency, and effectiveness in the operations of the local government by conducting meaningful and accurate investigations and forensic audits, and to detect and deter waste, fraud, and abuse. At least annually, a report of the local inspector shall be submitted to the emergency manager, the state treasurer, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The annual report of the local inspector shall be posted on the local government's website within 7 days after the report is submitted. The duties of a local auditor are to assure that internal controls over local government operations are designed and operating effectively to mitigate risks that hamper the achievement of the emergency manager's financial plan, assure that local government operations are effective and efficient, assure that financial information is accurate, reliable, and timely, comply with policies, regulations, and applicable laws, and assure assets are properly managed. At least annually, a report of the local auditor shall be submitted to the emergency manager, the state treasurer, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The annual report of the local auditor shall be posted on the local government's website within 7 days after the report is submitted.

(q) An emergency manager may initiate court proceedings in the Michigan court of claims or in the circuit court of the county in which the local government is located in the name of the local government to enforce compliance with any of his or her orders or any constitutional or legislative mandates, or to restrain violations of any constitutional or legislative power or his or her orders.

(r) Subject to section 19, if provided in the financial and operating plan, or otherwise with the prior written approval of the governor or his or her designee, sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government, provided the use or transfer of assets, liabilities, functions, or responsibilities for this purpose does not endanger the health, safety, or welfare of residents of the local government or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.

(s) Apply for a loan from the state on behalf of the local government, subject to the conditions of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(t) Order, as necessary, 1 or more millage elections for the local government consistent with the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article IX of the state constitution of 1963, and any other applicable state law.

(u) Subject to section 19, authorize the borrowing of money by the local government as provided by law.

(v) Approve or disapprove of the issuance of obligations of the local government on behalf of the local government under this subdivision. An election to approve or disapprove of the issuance of obligations of the local government pursuant to this subdivision shall only be held at the general November election.

(w) Enter into agreements with creditors or other persons or entities for the payment of existing debts, including the settlement of claims by the creditors.

(x) Enter into agreements with creditors or other persons or entities to restructure debt on terms, at rates of interest, and with security as shall be agreed among the parties, subject to approval by the state treasurer.

(y) Enter into agreements with other local governments, public bodies, or entities for the provision of services, the joint exercise of powers, or the transfer of functions and responsibilities.

(z) For municipal governments, enter into agreements with other units of municipal government to transfer property of the municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as otherwise provided by law, subject to approval by the state treasurer.

(aa) Enter into agreements with 1 or more other local governments or public bodies for the consolidation of services.

(bb) For a city, village, or township, the emergency manager may recommend to the state boundary commission that the municipal government consolidate with 1 or more other municipal governments, if the emergency manager determines that consolidation would materially alleviate the financial emergency of the municipal government and would not materially and adversely affect the financial situation of the government or governments with which the municipal government in receivership is consolidated. Consolidation under this subdivision shall proceed as provided by law.

(cc) For municipal governments, with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law. The disincorporation or dissolution of the local government is subject to a vote of the electors of that local government if required by law.

(dd) Exercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government as provided in the following acts:

(i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(ii) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(iii) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(iv) 1851 PA 156, MCL 46.1 to 46.32.

(v) 1966 PA 293, MCL 45.501 to 45.521.

(vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

(vii) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.

(viii) The revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(ix) The state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(ee) Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities.

(ff) Remove, replace, appoint, or confirm the appointments to any office, board, commission, authority, or other entity which is within or is a component unit of the local government.

(2) Except as otherwise provided in this act, during the pendency of the receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the emergency manager.

(3) Except as otherwise provided in this subsection, any contract involving a cumulative value of \$50,000.00 or more is subject to competitive bidding by an emergency manager. However, if a potential contract involves a cumulative value of \$50,000.00 or more, the emergency manager may submit the potential contract to the state treasurer for review and the state treasurer may authorize that the potential contract is not subject to competitive bidding.

(4) An emergency manager appointed for a city or village shall not sell or transfer a public utility furnishing light, heat, or power without the approval of a majority of the electors of the city or village voting thereon, or a greater number if the city or village charter provides, as required by section 25 of article VII of the state constitution of 1963. In addition, an emergency manager appointed for a city or village shall not utilize the assets of a public utility furnishing heat, light, or power, the finances of which are separately maintained and accounted for by the city or village, to satisfy the general obligations of the city or village.

Sec. 13. Upon appointment of an emergency manager and during the pendency of the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and members of the governing body of the local government shall be eliminated. This section does not authorize the impairment of vested pension benefits. If an emergency manager has reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and members of the governing body of a local government before the effective date of this act, the reduction, suspension, or elimination is valid to the same extent had it occurred after the effective date of this act. The emergency manager may restore, in whole or in part, any of the salary, wages, other compensation, or benefits of the chief administrative officer and members of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to the extent that the emergency manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan.

Sec. 14. In addition to the actions otherwise authorized in this act, an emergency manager for a school district may take 1 or more of the following additional actions with respect to a school district that is in receivership:

- (a) Negotiate, renegotiate, approve, and enter into contracts on behalf of the school district.
- (b) Receive and disburse on behalf of the school district all federal, state, and local funds earmarked for the school district. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.
- (c) Seek approval from the superintendent of public instruction for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.
- (d) Subject to section 19, sell, assign, transfer, or otherwise use the assets of the school district to meet past or current obligations or assure the fiscal accountability of the school district, provided the use, assignment, or transfer of assets for this purpose does not impair the education of the pupils of the school district. The power under this subdivision includes the closing of schools or other school buildings in the school district.
- (e) Approve or disapprove of the issuance of obligations of the school district.
- (f) Exercise solely, for and on behalf of the school district, all other authority and responsibilities affecting the school district that are prescribed by law to the school board and superintendent of the school district.
- (g) With the approval of the state treasurer, employ or contract for, at the expense of the school district, school administrators considered necessary to implement this act.

Sec. 15. (1) Unless the potential sale and value of an asset is included in the emergency manager's financial and operating plan, the emergency manager shall not sell an asset of the local government valued at more than \$50,000.00 without the state treasurer's approval.

(2) A provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter that occurs in the line of duty shall not be impaired and is not subject to any provision of this act authorizing an emergency manager to reject, modify, or terminate 1 or more terms of an existing collective bargaining agreement.

Sec. 16. An emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation.

Sec. 17. Beginning 6 months after an emergency manager's appointment, and every 3 months thereafter, an emergency manager shall submit to the governor, the state treasurer, the senate majority leader, the speaker of the house of representatives, each state senator and state representative who represents the local government that is in receivership, and the clerk of the local government that is in receivership, and shall post on the internet on the website of the local government, a report that contains all of the following:

- (a) A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the source of the funds.
- (b) A list of each contract that the emergency manager awarded or approved with a cumulative value of \$5,000.00 or more, including the purpose of the contract and the identity of the contractor.
- (c) A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the proposed use of the funds.
- (d) A description of any new position created or any vacancy in a position filled by the appointing authority.
- (e) A description of any position that has been eliminated or from which an employee has been laid off.
- (f) A copy of the contract with the emergency manager as provided in section 9(3)(e).
- (g) The salary and benefits of the emergency manager.
- (h) The financial and operating plan.

Sec. 18. (1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States

Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.

(2) The recommendation to the governor and the state treasurer under subsection (1) shall include 1 of the following:

(a) A determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner.

(b) A determination by the emergency manager that a plan, in effect for at least 180 days, cannot be implemented as written or as it might be amended in a manner that can satisfactorily rectify the financial emergency in a timely manner.

(3) The emergency manager shall provide a copy of the recommendation as provided under subsection (1) to the superintendent of public instruction if the local government is a school district.

Sec. 19. (1) Except as otherwise provided in this subsection, before an emergency manager executes an action under section 12(1)(k), (r), or (u) or section 14(d), he or she shall submit his or her proposed action to the governing body of the local government. The governing body of the local government shall have 10 days from the date of submission to approve or disapprove the action proposed by the emergency manager. If the governing body of the local government does not act within 10 days, the proposed action is considered approved by the governing body of the local government and the emergency manager may then execute the proposed action. For an action under section 12(1)(r) or section 14(d), this subsection only applies if the asset, liability, function, or responsibility involves an amount of \$50,000.00 or more.

(2) If the governing body of the local government disapproves the proposed action within 10 days, the governing body of the local government shall, within 7 days of its disapproval of the action proposed by the emergency manager, submit to the local emergency financial assistance loan board an alternative proposal that would yield substantially the same financial result as the action proposed by the emergency manager. The local emergency financial assistance loan board shall have 30 days to review both the alternative proposal submitted by the governing body of the local government and the action proposed by the emergency manager and to approve either the alternative proposal submitted by the governing body of the local government or the action proposed by the emergency manager. The local emergency financial assistance loan board shall approve the proposal that best serves the interest of the public in that local government. The emergency manager shall implement the alternative proposal submitted by the governing body of the local government or the action proposed by the emergency manager, whichever is approved by the local emergency financial assistance loan board.

Sec. 20. (1) An emergency manager is immune from liability as provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person employed by an emergency manager is immune from liability as provided in section 7(2) of 1964 PA 170, MCL 691.1407.

(2) The attorney general shall defend any civil claim, demand, or lawsuit which challenges any of the following:

(a) The validity of this act.

(b) The authority of a state official or officer acting under this act.

(c) The authority of an emergency manager if the emergency manager is or was acting within the scope of authority for an emergency manager under this act.

(3) With respect to any aspect of a receivership under this act, the costs incurred by the attorney general in carrying out the responsibilities of subsection (2) for attorneys, experts, court filing fees, and other reasonable and necessary expenses shall be at the expense of the local government that is subject to that receivership and shall be reimbursed to the attorney general by the local government. The failure of a municipal government that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the municipal government from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the school district from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(4) An emergency manager may procure and maintain, at the expense of the local government for which the emergency manager is appointed, worker's compensation, general liability, professional liability, and motor vehicle insurance for the emergency manager and any employee, agent, appointee, or contractor of the emergency manager as may be provided to elected officials, appointed officials, or employees of the local government. The insurance procured and maintained by an emergency manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the emergency manager and any employee, agent, appointee, or contractor of the emergency manager from the date of appointment of the emergency manager to the expiration of the applicable statute of limitation if the claim, demand, or lawsuit asserted or costs recovered against the emergency manager or any employee, agent, appointee, or contractor of the emergency manager resulted from conduct of the emergency manager or any employee, agent,

appointee, or contractor of the emergency manager taken in accordance with this act during the emergency manager's term of service.

(5) If, after the date that the service of an emergency manager is concluded, the emergency manager or any employee, agent, appointee, or contractor of the emergency manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of that emergency manager, and not covered by a procured worker's compensation, general liability, professional liability, or motor vehicle insurance, litigation expenses of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager, including attorney fees for civil and criminal proceedings and preparation for reasonably anticipated proceedings, and payments made in settlement of civil proceedings both filed and anticipated, shall be paid out of the funds of the local government that is or was subject to the receivership administered by that emergency manager, provided that the litigation expenses are approved by the state treasurer and that the state treasurer determines that the conduct resulting in actual or threatened legal proceedings that is the basis for the payment is based upon both of the following:

- (a) The scope of authority of the person or entity seeking the payment.
- (b) The conduct occurred on behalf of a local government while it was in receivership under this act.

(6) The failure of a municipal government to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

Sec. 21. (1) Before the termination of receivership and the completion of the emergency manager's term, or if a transition advisory board is appointed under section 23, then before the transition advisory board is appointed, the emergency manager shall adopt and implement a 2-year budget, including all contractual and employment agreements, for the local government commencing with the termination of receivership.

(2) After the completion of the emergency manager's term and the termination of receivership, the governing body of the local government shall not amend the 2-year budget adopted under subsection (1) without the approval of the state treasurer, and shall not revise any order or ordinance implemented by the emergency manager during his or her term prior to 1 year after the termination of receivership.

Sec. 22. (1) If an emergency manager determines that the financial emergency that he or she was appointed to manage has been rectified, the emergency manager shall inform the governor and the state treasurer.

(2) If the governor disagrees with the emergency manager's determination that the financial emergency has been rectified, the governor shall inform the emergency manager and the term of the emergency manager shall continue or the governor shall appoint a new emergency manager.

(3) Subject to subsection (4), if the governor agrees that the financial emergency has been rectified, the emergency manager has adopted a 2-year budget as required under section 21, and the financial conditions of the local government have been corrected in a sustainable fashion as required under section 9(7), the governor may do either of the following:

- (a) Remove the local government from receivership.
 - (b) Appoint a receivership transition advisory board as provided in section 23.
- (4) Before removing a local government from receivership, the governor may impose 1 or more of the following conditions on the local government:
- (a) The implementation of financial best practices within the local government.
 - (b) The adoption of a model charter or model charter provisions.
 - (c) Pursue financial or managerial training to ensure that official responsibilities are properly discharged.

Sec. 23. (1) Before removing a local government from receivership, the governor may appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated.

(2) A receivership transition advisory board shall consist of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, and, if the local government is a school district, the superintendent of public instruction or his or her designee. The governor also may appoint to a receivership transition advisory board 1 or more other individuals with relevant professional experience, including 1 or more residents of the local government.

(3) A receivership transition advisory board serves at the pleasure of the governor.

(4) At its first meeting, a receivership transition advisory board shall adopt rules of procedure to govern its conduct, meetings, and periodic reporting to the governor. Procedural rules required by this section are not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A receivership transition advisory board may do all of the following:

(a) Require the local government to annually convene a consensus revenue estimating conference for the purpose of arriving at a consensus estimate of revenues to be available for the ensuing fiscal year of the local government.

(b) Require the local government to provide monthly cash flow projections and a comparison of budgeted revenues and expenditures to actual revenues and expenditures.

(c) Review proposed and amended budgets of the local government. A proposed budget or budget amendment shall not take effect unless approved by the receivership transition advisory board.

(d) Review requests by the local government to issue debt under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.

(e) Review proposed collective bargaining agreements negotiated under section 15(1) of 1947 PA 336, MCL 423.215. A proposed collective bargaining agreement shall not take effect unless approved by the receivership transition advisory board.

(f) Review compliance by the local government with a deficit elimination plan submitted under section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921.

(g) Review proposed judgment levies before submission to a court under section 6093 or 6094 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6093 and 600.6094.

(h) Perform any other duties assigned by the governor at the time the receivership transition advisory board is appointed.

(6) A receivership transition advisory board is a public body as that term is defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262, and meetings of a receivership transition advisory board are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A receivership transition advisory board is also a public body as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232, and a public record in the possession of a receivership transition advisory board is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 24. The governor may, upon his or her own initiative or after receiving a recommendation from a receivership transition advisory board, determine that the financial conditions of a local government have not been corrected in a sustainable fashion as required under section 9(7) and appoint a new emergency manager.

Sec. 25. (1) A neutral evaluation process may be utilized as provided for in this act. The state treasurer may, in his or her own discretion, determine that the state monitor the neutral evaluation process initiated by a local government under this section and may identify 1 or more individuals who may attend and observe the neutral evaluation process. A local government shall initiate the neutral evaluation process by providing notice by certified mail of a request for neutral evaluation process to all interested parties. If the local government does not provide notice under this subsection to all interested parties within 7 days after selecting the neutral evaluation process option, the treasurer may require the local government to go into receivership and proceed under section 9.

(2) An interested party shall respond within 10 business days of receipt of notice of the local government's request for neutral evaluation process.

(3) The local government and the interested parties agreeing to participate in the neutral evaluation process shall, through a mutually agreed-upon process, select a neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.

(4) If the local government and interested parties fail to agree on a neutral evaluator within 7 days after the interested parties have responded to the notification sent by the local government, the local government shall, within 7 days, select 5 qualified neutral evaluators and provide their names, references, and backgrounds to the participating interested parties. Within 3 business days, a majority of participating interested parties may disqualify up to 4 names from the list. If a majority of participating interested parties disqualify 4 names from the list, the remaining candidate shall be the neutral evaluator. If the majority of participating parties disqualify fewer than 4 names, the local government shall choose which of the remaining candidates shall be the neutral evaluator.

(5) If an interested party objects to the qualifications of the neutral evaluator after the process for selection in subsection (4) is complete, the interested party may appeal to the state treasurer to determine if the neutral evaluator meets the qualifications under subsection (6). If the state treasurer determines that the qualifications have been met, the neutral evaluation process shall continue. If the state treasurer determines that the qualifications have not been met, the state treasurer shall select the neutral evaluator.

(6) A neutral evaluator shall have experience and training in conflict resolution and alternative dispute resolution and have at least 1 of the following qualifications:

(a) At least 10 years of high-level business or legal experience involving bankruptcy or service as a United States bankruptcy judge.

(b) At least 10 years of combined professional experience or training in municipal finance in 1 or more of the following areas:

(i) Municipal organization.

(ii) Municipal debt restructuring.

(iii) Municipal finance dispute resolution.

(iv) Chapter 9 bankruptcy.

(v) Public finance.

(vi) Taxation.

(vii) Michigan constitutional law.

(viii) Michigan labor law.

(ix) Federal labor law.

(7) The neutral evaluator's performance shall be impartial, objective, independent, and free from prejudice. The neutral evaluator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values, or beliefs, or performance during the neutral evaluation process.

(8) The neutral evaluator shall avoid a conflict of interest and the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest. Notwithstanding subsection (16), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local government and all interested parties involved in the neutral evaluation process. If any participating interested party to the neutral evaluation process objects to the neutral evaluator, that interested party shall notify the local government and all other participating interested parties to the neutral evaluation process, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator. The neutral evaluator shall withdraw, and a new neutral evaluator shall be selected as provided in subsections (3) and (4).

(9) Before commencing a neutral evaluation process, the neutral evaluator shall not establish another fiscal or fiduciary relationship with any of the interested parties or the local government in a manner that would raise questions about the integrity of the neutral evaluation process, except that the neutral evaluator may conduct further neutral evaluation processes regarding other potential local public entities that may involve some of the same or similar constituents to a prior mediation.

(10) The neutral evaluator shall conduct the neutral evaluation process in a manner that promotes voluntary, uncoerced decision making in which each participant makes free and informed choices regarding the neutral evaluation process and outcome.

(11) The neutral evaluator shall not impose a settlement on the participants. The neutral evaluator shall use his or her best efforts to assist the participants to reach a satisfactory resolution of their disputes. Subject to the discretion of the neutral evaluator, the neutral evaluator may make oral or written recommendations for a settlement or plan of readjustment to a participant privately or to all participants jointly.

(12) The neutral evaluator shall inform the local government and all participants of the provisions of chapter 9 relative to other chapters of title 11 of the United States Code, 11 USC 101 to 1532. This instruction shall highlight the limited authority of United States bankruptcy judges in chapter 9, including, but not limited to, the restriction on federal bankruptcy judges' authority to interfere with or force liquidation of a local government's property and the lack of flexibility available to federal bankruptcy judges to reduce or cram down debt repayments and similar efforts not available to reorganize the operations of the local government that may be available to a corporate entity.

(13) The neutral evaluator may request from the participants documentation and other information that the neutral evaluator believes may be helpful in assisting the participants to address the obligations between them. This documentation may include the status of funds of the local government that clearly distinguishes between general funds and special funds and the proposed plan of readjustment prepared by the local government. The participants shall respond to a request from the neutral evaluator in a timely manner.

(14) The neutral evaluator shall provide counsel and guidance to all participants, shall not be a legal representative of any participant, and shall not have a fiduciary duty to any participant.

(15) If a settlement with all interested parties and the local government occurs, the neutral evaluator may assist the participants in negotiating a pre-petitioned, pre-agreed-upon plan of readjustment in connection with a potential chapter 9 filing.

(16) If at any time during the neutral evaluation process the local government and a majority of the representatives of the interested parties participating in the neutral evaluation process wish to remove the neutral evaluator, the local government or any interested party may make a request to the other interested parties to remove the neutral evaluator. If the local government and a majority of the interested parties agree that the neutral evaluator should be removed and agree on who should replace the neutral evaluator, the local government and the interested parties shall select a new neutral evaluator.

(17) The local government and all interested parties participating in the neutral evaluation process shall negotiate in good faith.

(18) The local government and each interested party shall provide a representative to attend all sessions of a neutral evaluation process. Each representative shall have the authority to settle and resolve disputes or shall be in a position to present any proposed settlement or plan of readjustment to the participants in the neutral evaluation process.

(19) The local government and the participating interested parties shall maintain the confidentiality of the neutral evaluation process and shall not at the conclusion of the neutral evaluation process or during any bankruptcy proceeding disclose statements made, information disclosed, or documents prepared or produced unless a judge in a chapter 9 bankruptcy proceeding orders that the information be disclosed to determine the eligibility of a local government to proceed with a bankruptcy proceeding under chapter 9, or as otherwise required by law.

(20) A neutral evaluation process authorized by this act shall not last for more than 60 days following the date the neutral evaluator is initially selected, unless the local government or a majority of participating interested parties elect to extend the neutral evaluation process for up to 30 additional days. The neutral evaluation process shall not last for more than 90 days following the date the neutral evaluator is initially selected.

(21) The local government shall pay 50% of the costs of a neutral evaluation process, including, but not limited to, the fees of the neutral evaluator, and the interested parties shall pay the balance of the costs of the neutral evaluation process, unless otherwise agreed to by the local government and a majority of the interested parties.

(22) The neutral evaluation process shall end if any of the following occur:

(a) The local government and the participating interested parties execute a settlement agreement. However, if the state treasurer determines that the settlement agreement does not provide sufficient savings to the local government, the state treasurer shall provide notice to the local government that the settlement agreement does not provide sufficient savings to the local government and the local government shall proceed under 1 of the other local government options as provided in section 7.

(b) The local government and the participating interested parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge.

(c) The neutral evaluation process has exceeded 60 days following the date the neutral evaluator was selected, the local government and the participating interested parties have not reached an agreement, and neither the local government nor a majority of the interested parties elect to extend the neutral evaluation process past the initial 60-day time period.

(d) The local government initiated the neutral evaluation process under subsection (1) and did not receive a response from any interested party within the time specified in subsection (2).

(e) The fiscal condition of the local government deteriorates to the point that necessitates the need to proceed under the chapter 9 bankruptcy option pursuant to section 26.

(23) If the 60-day time period for a neutral evaluation process expires, including any extension of the neutral evaluation process past the initial 60-day time period under subsection (20), and the neutral evaluation process is complete with differences resolved, the neutral evaluation process shall be concluded. If the neutral evaluation process does not resolve all pending disputes with the local government and the interested parties, or if subsection (22)(b), (c), or (d) applies, the governing body of the local government shall adopt a resolution recommending that the local government proceed under chapter 9 and submit the resolution to the governor and the state treasurer. Except as otherwise provided in this subsection, if the local government has a strong mayor, the resolution requires strong mayor approval before the local government proceeds under chapter 9. The resolution shall include a statement determining that the financial condition of the local government jeopardizes the health, safety, and welfare of the residents who reside within the local government or service area of the local government absent the protections of chapter 9. If the governor approves the resolution for the local government to proceed under chapter 9, the governor shall inform the local government in writing of the decision. The governor may place contingencies on a local government in order to proceed under chapter 9 including, but not limited to, appointing a person to act exclusively on behalf of the local government in the chapter 9 bankruptcy proceedings. If the governing body of the local government fails to adopt a resolution within 7 days after the neutral evaluation process is concluded as provided in this subsection, the governor may appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. If the governor does not appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings, the chief administrative officer of the local government shall act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. Upon receiving written approval from the governor under section 26, the local government may file a petition under chapter 9 and exercise powers under federal bankruptcy law.

Sec. 26. (1) With the written approval of the governor, a local government may file a petition under chapter 9 and exercise powers pursuant to federal bankruptcy law if the local government adopts a resolution, by a majority vote of the governing body of the local government, that declares a financial emergency in the local government. Except as otherwise provided in this subsection, if the local government has a strong mayor, the resolution requires strong mayor approval. The resolution shall include a statement determining that the financial condition of the local government jeopardizes the health, safety, and welfare of the residents who reside within the local government or service area of the local government absent the protections of chapter 9 and that the local government is or will be unable to pay its obligations within 60 days following the adoption of the resolution.

(2) If the governor approves a local government to proceed under chapter 9, the governor shall inform the local government in writing of the decision. The governor may place contingencies on a local government in order to proceed under chapter 9 including, but not limited to, appointing a person to act exclusively on behalf of the local government in the chapter 9 bankruptcy proceedings. If the governor does not appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings, the chief administrative officer of the local government shall act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. Upon receipt of the written approval and subject to this subsection, the local government may proceed under chapter 9 and exercise powers under federal bankruptcy law.

(3) If the governor does not approve a local government to proceed under chapter 9, the local government shall within 7 days select 1 of the other local options as provided in section 7.

Sec. 27. (1) The local elected and appointed officials and employees, agents, and contractors of a local government shall promptly and fully provide the assistance and information necessary and properly requested by the state financial authority, a review team, or the emergency manager in the effectuation of their duties and powers and of the purposes of this act. If the review team or emergency manager believes that a local elected or appointed official or employee, agent, or contractor of the local government is not answering questions accurately or completely or is not furnishing information requested, the review team or emergency manager may issue subpoenas and administer oaths to the local elected or appointed official or employee, agent, or contractor to furnish answers to questions or to furnish documents or records, or both. If the local elected or appointed official or employee, agent, or contractor refuses, the review team or emergency manager may bring an action in the circuit court in which the local government is located or the Michigan court of claims, as determined by the review team or emergency manager, to compel testimony and furnish records and documents. An action in mandamus may be used to enforce this section.

(2) Failure of a local government official to abide by this act shall be considered gross neglect of duty, which the review team or emergency manager may report to the state financial authority and the attorney general. Following review and a hearing with a local government elected official, the state financial authority may recommend to the governor that the governor remove the elected official from office. If the governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

(3) A local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Sec. 28. This act does not give the emergency manager or the state financial authority the power to impose taxes, over and above those already authorized by law, without the approval at an election of a majority of the qualified electors voting on the question.

Sec. 29. The state financial authority shall issue bulletins or promulgate rules as necessary to carry out the purposes of this act. Rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 30. (1) All of the following actions that occurred under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72, before the effective date of this act are effective under this act:

(a) A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probable financial stress or a serious financial problem in a local government.

(b) The appointment of a review team.

(c) The findings and conclusion contained in a review team report submitted to the governor.

(d) A determination by the governor of a financial emergency in a local government.

(e) A confirmation by the governor of a financial emergency in a local government.

(2) An action contained in subsection (1) need not be reenacted or reaffirmed in any manner to be effective under this act.

Sec. 31. An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall continue under this act as an emergency manager for the local government.

Sec. 32. This act does not impose any liability or responsibility in law or equity upon this state, any department, agency, or other entity of this state, or any officer or employee of this state, or any member of a receivership transition advisory board, for any action taken by any local government under this act, for any violation of the provisions of this act by any local government, or for any failure to comply with the provisions of this act by any local government. A cause of action against this state or any department, agency, or entity of this state, or any officer or employee of this state acting in his or her official capacity, or any membership of a receivership transition advisory board acting in his or her official capacity, may not be maintained for any activity authorized by this act, or for the act of a local government filing under chapter 9, including any proceeding following a local government's filing.

Sec. 33. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of this act which can be given effect without the invalid portion or application. The provisions of this act are severable.

Sec. 34. For the fiscal year ending September 30, 2013, \$780,000.00 is appropriated from the general fund to the department of treasury to administer the provisions of this act and to pay the salaries of emergency managers. The appropriation made and the expenditures authorized to be made by the department of treasury are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 35. (1) For the fiscal year ending September 30, 2013, \$5,000,000.00 is appropriated from the general fund to the department of treasury to administer the provisions of this act, to secure the services of financial consultants, lawyers, work-out experts, and other professionals to assist in the implementation of this act, and to assist local governments in proceeding under chapter 9.

(2) The appropriation authorized in this section is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide technical and administrative support for the department of treasury to implement this act. Costs related to this project include, but are not limited to, all of the following:

(i) Staffing-related costs.

(ii) Costs to promote public awareness.

(iii) Any other costs related to implementation and dissolution of the program, including the resolution of accounts.

(b) The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.

(c) The total estimated completion cost of the project is \$5,000,000.00.

(d) The expected completion date is September 30, 2016.

Enacting section 1. The local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291, is repealed.

Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following:

(a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(b) 1966 PA 293, MCL 45.501 to 45.521.

(c) 1851 PA 156, MCL 46.1 to 46.32.

(d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

(e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.

(f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

- (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426.
(i) 1947 PA 336, MCL 423.201 to 423.217.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

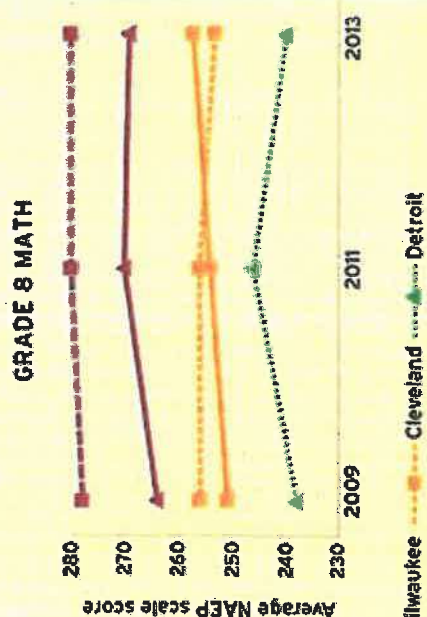
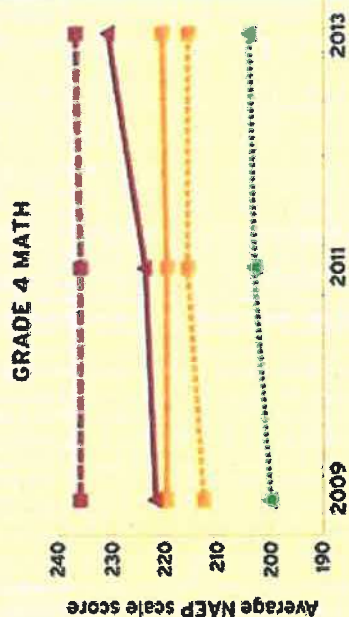
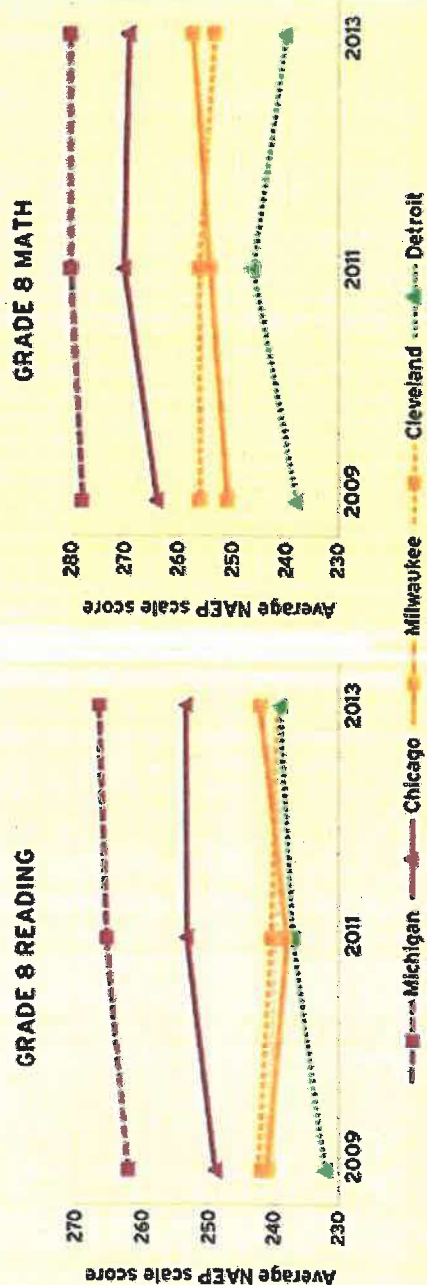
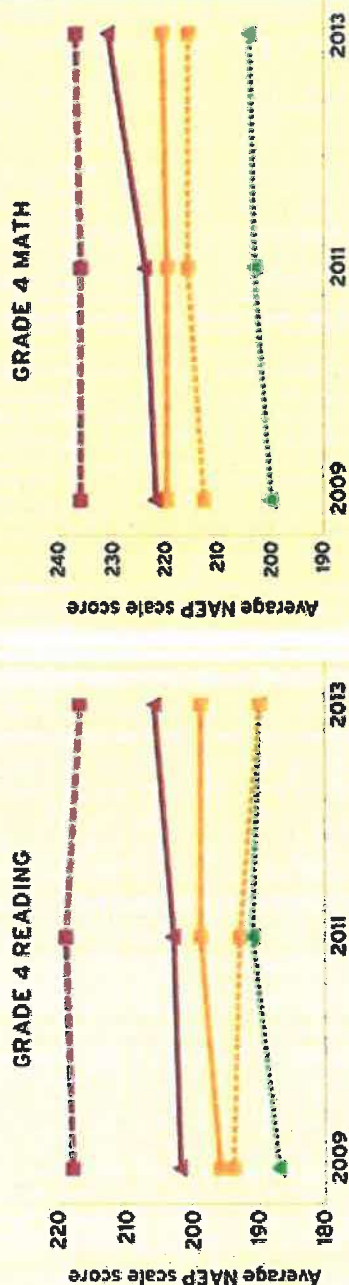
Approved

.....
Governor

EXHIBIT 12

Large Performance Gaps (Figure 2)

Across subjects and grades, Detroit student performance on the National Assessment for Educational Progress lags behind student performance elsewhere.



SOURCE: U.S. Department of Education, National Center for Education Statistics